

**SECRETARY OF STATE FOR  
WORK & PENSIONS**

**CONTRACT DOCUMENT**

**for**

**THE PROVISION OF RECORD STORAGE  
SERVICES**

**Throughout the UNITED KINGDOM**

**CONTRACT REFERENCE NUMBER: IV 3304**

**RESTRICTED – MANAGEMENT AND COMMERCIAL  
RECORDS STORAGE PROJECT**

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**SECTION ONE**

**FORM OF AGREEMENT**

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**THIS CONTRACT** is made on

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**BETWEEN**

(1) **THE SECRETARY OF STATE FOR WORK AND PENSIONS** (hereinafter called the “Authority”) and

(2) **CAPITA BUSINESS SERVICES LIMITED**  
(hereinafter called the “Contractor”).

**(and hereinafter called the “Parties”)**

1. The Contract between the Parties consists of this Form of Contract together with the attached Sections 2 to 5 and the attached Appendices and such documents are referred to collectively as the “Contract”. In the event of any conflict between the Sections of this Contract the following order of priority shall apply:

Section 1: Form of Contract;

Section 2: Conditions of Contract;

Section 3: Business Requirement;

Section 4: Schedule of Prices and Rates, Service Levels and Service Credits;

Section 5: Administration Instructions

2. The Contract records and constitutes the entire agreement between the Parties at the date hereof and supersedes all or any prior negotiations, representations or agreements either written or oral in relation thereto.

3. The Contractor shall provide the services in accordance with the Contract.

4. The parties shall be entitled to such rights and be subject to such obligations as are imposed by the Contract.

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**SIGNED:**

**For the Contractor**

**Signature:**

**Full Name:**

**Title of position held on behalf of the Contractor:**

**Date:**

**For the Authority**

**Signature:**

**Full Name:**

**Title of position held on behalf of the Secretary of State for Work and Pensions :**

**Date:**

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**SECTION TWO**

**CONDITIONS OF CONTRACT**

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These Conditions of Contract contain certain words and phrases which have definitions adopted specifically for these Conditions. Aside from proper nouns which will always attract upper case initial letters, readers should initially assume that all words or phrases in which initial letters are in upper case, are words or phrases which have meanings defined for the purpose of these Conditions and should refer to Condition 1 of these Conditions for the appropriate definition. All defined words and phrases listed in Condition 1 are in alphabetical order.

**1. DEFINITIONS AND INTERPRETATIONS**

<b>Word or Phrase</b>	<b>Meaning</b>
<b>‘Approval’ and ‘Approved’</b>	the prior consent in writing of the Authority or the Authority’s Representative;
<b>‘Authority’</b>	the Secretary of State for Work and Pensions;
<b>‘Authority’s Data’</b>	means the files and records, and data and information relating to such files and records, which are embodied in any electronic or tangible medium, excluding any computer software, and which are supplied or in respect of which access is granted to the Contractor by the Authority pursuant to this Agreement, or which the Contractor is required to generate under this Agreement;
<b>‘Authority’s Premises’</b>	the land or buildings owned or occupied by the Authority where the Services are performed;
<b>‘Authority’s Property’</b>	any property, other than real property issued or made available to the Contractor by the Authority in connection with the Contract;
<b>‘Authority’s Representative’</b>	the person or persons appointed by the Authority as authorised to act on behalf of the Authority on matters relating to this Contract;
<b>‘Business Requirements’</b>	the Business Requirements related to the Core Services specified in Section 3 of the Contract;
<b>‘Commencement Date’</b>	the date on which this Contract is made;
<b>‘Commencement of Full Operations’</b>	the point in time when the Contractor becomes

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	responsible for the provision of the Services following the completion of the Implementation Period;
<b>‘Condition’</b>	a clause or sub-clause of this Contract and “Conditions” shall be construed accordingly;
<b>‘Confidential Information’</b>	all information whether conveyed or represented orally, in writing, in machine readable form or otherwise which is (a) designated as confidential, or as “Top Secret”, “Secret”, “Confidential”, “Restricted” or “Commercial” by either party in writing and/or information which may reasonably be regarded as the confidential information of the disclosing party;
<b>‘Confidentiality Undertaking’</b>	an executed and delivered confidentiality undertaking in the form set out in Appendix A to Section 5;
<b>‘Contract’</b>	the five sections of this Contract consisting of the Form of Contract (1), these Conditions of Contract (2), the Business Requirement (3), the Schedule of Prices and Rates (4) and the Administrative Instructions (5) together with the attached Schedules [and Appendices] and any variations;
<b>‘Contract Change’</b>	change to the terms of this Contract in accordance with Condition 37;
<b>‘Contract Period’</b>	the period beginning on the Commencement Date and ending on the expiry of the period referred to in Condition 3.1 as may be extended pursuant to Condition 3.2 or on early termination of the Contract;
<b>‘Contract Price’</b>	the price(s), charges and fees exclusive of Value Added Tax, payable by the Authority to the Contractor for the performance of the Services;

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<b>‘Contract Year’</b>	a period of twelve months commencing on 1st July 2004 and each 1st July thereafter;
<b>‘Contractor’</b>	the Party defined as such in the Form of Contract in Section 1;
<b>‘Contractor’s Representative’</b>	the person or persons appointed by the Contractor as described in Condition 11;
<b>‘Core Service’</b>	the services to be provided from Heywood by the Contractor as set out in Appendix 2 to Section 3;
<b>‘Courier’</b>	the courier(s) engaged by the Authority to transport items from and to the Premises;
<b>‘Crown Body’</b>	any department or agency which forms part of the administration system which supports Government business;
<b>‘DCS’</b>	the Disability and Carers Service at Heywood

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<b>‘DCS [Heywood] Service’</b>	the DCS related services to be provided at Heywood by the Contractor which are described in initial form in Appendix 3 to Section 3 and which shall be reviewed pursuant to Conditions 7.2 and 7.3;
<b>‘Default’</b>	any breach of obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, servants, agents or subcontractors in connection with or in relation to the subject matter of this Contract;
<b>‘Destruction Notice’</b>	a written instruction from the Authority authorising the destruction of a file;
<b>‘Dispute Resolution Procedure’</b>	the procedure as detailed in Condition 44 for resolving disputes that may arise in connection with the Contract;
<b>“DWP Filestore Sites”</b>	the Authority’s Premises listed in Appendix I to Section 5;
<b>‘Equipment’</b>	tangible, moveable property which is owned by, hired or leased or loaned to the Contractor or which is or has been in the possession of or used by the Contractor and which is used by the Contractor and/or the Authority and/or any other Person in connection with this Contract;
<b>“Heywood”</b>	the records storage facility at Heywood Lancashire;
<b>‘Implementation Period’</b>	the period ending at midnight on the day before the Commencement of Full Operations;

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<b>‘Implementation Plan’</b>	the Approved plan for implementation by the Contractor during the Implementation Period which will ensure that the Contractor’s Services are capable of being provided in accordance with the Business Requirements with effect from the Commencement of Full Operations;
<b>“Incumbent”</b>	Iron Mountain (UK) Limited;
<b>‘Intellectual Property Rights’</b>	any patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyrights, database rights, know how, trade or business names and other similar rights or obligations whether registerable or not, in any country (including but not limited to the UK);
<b>‘Key Staff’</b>	staff referred to in Condition 11 and in Appendix B to Section 5;
<b>‘Legacy File’</b>	a file relevant to this Agreement which was registered by the Incumbent (and which has not been subsequently registered by the Contractor) or which was located at Heywood prior to the 1st July 2004;
<b>‘Migration’</b>	the process of transferring files and other item from DWP Filestore Sites and DWP premises, including Nelson, Wilalnd and DCS Heywood, to the location at Heywood from where the Contractor will provide the Core Services;
<b>‘Migration Period’</b>	the period from 1 <sup>st</sup> July 2004 to 6 November 2006;
<b>‘Migration Plan’</b>	the plan detailing arrangements for the Migration of files and other items from the DWP Filestore Sites to Heywood during the Migration Period, as agreed and as may be amended from time to time by agreement between the Parties;
<b>‘Month’</b>	a calendar month;

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<b>“Nelson”</b>	the Authority records storage facility at Nelson, Lancashire;
<b>“Nelson Service”</b>	the services to be provided by the Contractor at Nelson which are described in initial form in Appendix 3 to Section 3 and which shall be reviewed pursuant to Conditions 7.2 and 7.3;
<b>“Outstanding Funding”</b>	any amounts representing, or costs associated with, the financing (from whatever source) of the Contractor’s obligations under this Contract which have not, up to the date of termination, been recovered by the Contractor through the charges and which would otherwise represent an unavoidable loss to the Contractor as a result of termination of the Contract (including, for the avoidance of doubt, any capital and other set-up costs already incurred or committed by the Contractor which have not been recovered as part of the charges);
<b>‘Parties’</b>	the Contractor and the Authority as identified in Section 1: Form of Contract;
<b>‘Person’</b>	includes any individual, partnership or body corporate or any public or private body or organisation;
<b>‘Personnel’</b>	all persons employed or engaged by the Authority whose duties consist wholly or partly of the management of this Contract;
<b>‘Premises’</b>	land or buildings where the services are performed at Heywood (Lancs), Nelson (Lancs) and Willand (Devon);
<b>“Premises Services”</b>	services to be provided by the Authority for the benefit of the Contractor related to the Contractor’s occupation of the Premises including without limitation those set out in Appendix J to Section 5;

<b>‘Price’</b>	a price entered in Section 4: Schedules of
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	Prices and Rates;
<b>‘Rates’</b>	a rate entered in Section 4: Schedules of Prices and Rates;
<b>“Relevant Transfer Date”</b>	the date on which the employment of a Transferring Employee transfers to the Contractor pursuant to Condition 15.1;
<b>‘Service Performance Records’</b>	the full and accurate records of all Services performed in connection with this Contract;
<b>‘Service(s)’</b>	means the Service(s) as set out in Section 3: Business Requirement, Condition 4;
<b>‘Staff’</b>	those persons employed by the Contractor to perform the Service;
<b>“Transfer Regulations”</b>	the Transfer of Undertakings (Protection of Employment) Regulations 1981 or any statutory or regulatory modification, amendment or replacement thereof;
<b>“Transferring Employees”</b>	those employees who are wholly or mainly engaged in services equivalent to the Services immediately before the Relevant Transfer Date and who are listed in Appendix F to Section 5;
<b>‘User’</b>	any person in the employment of the Authority who uses the Services provided and can specify a requirement in accordance with Section 3: Business Requirement;
<b>‘Variation’</b>	A properly executed variation to the Contract in compliance with Condition 37;
<b>‘Willand’</b>	The Authority records storage facility at Willand, Devon;
<b>‘Willand Service’</b>	the services to be provided by the Contractor at Willand which are described in initial form in Appendix 3 to Section 3 and which shall be



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reviewed pursuant to Conditions 7.2 and 7.3;

**‘Working Day’**

07:00 to 21:00 Monday to Friday excluding UK public holidays.

1.2 The interpretation and construction of the Contract shall be subject to the following provisions:

- a) References in this Contract to statutory provisions include all subsequent enactments, amendments and modifications made to them.
- b) References to the singular include the plural and vice versa and references to any gender include all genders. References to a person include any individual, firm, unincorporated association or body corporate.
- c) In the event of any inconsistency between the Conditions of Contract and any other provision of this Contract, the Conditions of Contract shall prevail.

1.3 The purpose of this Contract is to regulate the conduct of the parties to it and the relations between them which will arise during, and in some cases, after the agreed term of the Contract.

**2. ENTIRE AGREEMENT**

2.1 This Contract shall together with the documents referred to herein and any additional Contract terms formally agreed in writing between the Authority and the Contractor constitute the entire Agreement between the Authority and the Contractor relating to the delivery of the Service, and supersedes all prior representations, writings, negotiations and undertakings with respect hereto, except in the case of fraudulent misrepresentations made by either Party. The Contractor acknowledges that in entering into this Agreement it has not relied on any warranty, representation or undertaking given by or on behalf of the Authority.

**3. DURATION**

3.1 This Contract shall (subject to the provisions for earlier termination contained in this Contract and subject to Condition 3.2 below) terminate at midnight on 30 June 2011 (the “Expiry Date”).

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- 3.2 The parties may by agreement in accordance with the change control procedure set out in Condition 37 extend the period of the Contract in one or more periods up to a maximum of 3 years to be agreed no later than 6 months before the Contract would otherwise expire or no later than such other period as may be agreed in writing between the parties.

**4. OBLIGATIONS OF THE PARTIES**

- 4.1 The obligations of the Contractor are as follows:
- 4.1.1 During the Implementation Period to comply with and put into effect the Implementation Plan.
  - 4.1.2 During the period from the Commencement of Full Operations to the termination or expiry of the Contract, the Contractor shall (and shall procure that its sub-contractors shall) provide the Core Services promptly and efficiently in particular in accordance with the requirements of Section 3: Business Requirement.
  - 4.1.3 The Contractor understands that the effectiveness of the Contractor's delivery of the Core Service shall be measured against the service performance targets as specified in Section 3: Business Requirement, paragraph 2. In delivering the Core Services the Contractor shall be under an obligation to meet all performance targets as stated in Section 3: Business Requirement, paragraph 2.
  - 4.1.4 The Contractor shall comply with stipulations and recommended practices relating to the Services set out from time to time in the guidance issued by the Authority which is set out in Appendix K to Section 5 provided that if there is any conflict between the provisions of this Contract and the guidance, then the provisions of this Contract shall prevail. In the event of any change to such guidance any resulting changes to the Services and this Agreement shall be introduced in accordance with the change control procedure set out in Condition 37.
  - 4.1.5 The Contractor warrants and represents to the Authority that:
    - 4.1.5.1 the Contractor has full capacity and authority and all necessary licences, permits and consents to enter into and to perform this Contract; and
    - 4.1.5.2 this Contract is executed by a duly authorised Representative of the Contractor .

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- 4.1.6 Where the Contractor sub-contracts the delivery of all or any part of the Service, the Contractor shall remain accountable in all respects to the Authority for the full and proper delivery of the requirements of the Service.
- 4.1.7 The Contractor shall at all times provide the Services with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, courtesy, consideration and hygiene.
- 4.2 The obligations of the Authority are as follows:
  - 4.2.1 The Authority shall comply with the payment provisions set out in Section 4 provided that the Contractor has provided full and proper delivery of the Service in accordance with this Contract.
  - 4.2.2 The Authority shall use all reasonable endeavours to provide promptly to the Contractor all such information as the Contractor reasonably requires in order to provide the Service and comply with its obligations under the Contract.
  - 4.2.3 The Authority hereby grants to the Contractor a rent free licence to occupy the Premises for the Contract Period on the terms set out in Appendix J of Section 5.
  - 4.2.4 The Authority, as beneficial owner, shall sell and the Contractor shall purchase and accept the Transferring Equipment.
  - 4.2.5 To the extent to which the Authority is legally able to do so, the Authority hereby assigns all the Authority's rights against manufacturers, suppliers and third parties in respect of the Transferring Equipment to the Contractor. The Authority shall at the Contractor's request and expense give to the Contractor reasonable assistance to enable the Contractor to enforce such rights.
  - 4.2.6 Title to and risk in the Transferring Equipment shall pass to the Contractor on the 1<sup>st</sup> July 2004.
  - 4.2.7 As consideration for the agreement by the Authority to sell the Transferring Equipment, the Contractor hereby agrees to pay to the Authority the sum of one pound (£1) receipt of which is hereby acknowledged.
  - 4.2.8 The Authority grants (or shall procure that any relevant third party grants) to the Contractor a licence to use, to the extent reasonably required for the Contractor's provision of the Nelson Services, the

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Willand Services and the DCS Heywood Services, any of the Authority's IT hardware and software located at Nelson, Willand or DCS Heywood. The Authority shall be responsible for providing, to at least the same level of performance as was provided prior to the Relevant Transfer Date, all services including without limitation technical advice, support and maintenance required to enable the Contractor's use of such hardware and software.

4.3 The obligations of both parties are as follows:

4.3.1 The Authority and the Contractor mutually undertake to each other that in performing their obligations under this Contract they shall pay the utmost regard to the standing and reputation of the other and shall not do anything which may bring the standing or reputation of the other into disrepute or attract adverse publicity to the other.

4.4 The Authority hereby appoints the Contractor as its sole and exclusive provider of the Services for the Contract Period (save that the Authority shall not be obliged to contract with the Contractor for any additional services that would cause the Authority to be in breach of European Union public procurement legislation) and the Contractor hereby accepts such appointment.

4.5 The Contractor shall have robust contingency plans in place, agreed with the Authority, to ensure that the Services will be maintained in the event of disruption (including, but not limited to, disruption to the information technology systems) to the Contractor's operations, and those of sub-contractors to the Contractor, however caused. Such contingency plans shall be available for the Authority to inspect and to practically test at any reasonable time by agreement, and shall be subject to regular updating and revision throughout the currency of the Contract.

## **5. COMMENCEMENT OF FULL OPERATIONS**

5.1 Commencement of Full Operations shall start on 1<sup>st</sup> July 2004 if the Contractor either:

- a) has complied fully with the requirements as set out in Section 3: Business Requirement and the Approved Implementation Plan relating to the Implementation Period; or
- b) has otherwise demonstrated to the satisfaction of the Authority their capacity to deliver the Services to be provided following the Commencement of Full Operations.

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- 5.2 If by 30 June 2004 the Authority has not authorised the Commencement of Full Operations in accordance with Condition 5.1, the Authority shall have the right, after consulting with the Contractor to extend the Implementation Period for such period as may be agreed between the parties, during which period the Contractor shall correct the fault or deficiency which caused the Authority to withhold authorisation for the Commencement of Full Operations.
- 5.3 Where the Authority has not authorised the Commencement of Full Operations on the expiry of any extension of the Implementation Period under Condition 5.2, the Authority shall have the right to repeat the exercise of the option set out in Condition 5.2.

**6. CHANGES TO THE AUTHORITY'S REQUIREMENTS**

- 6.1 No guarantee is given by the Authority in respect of the levels or aggregate value of the Services which the Authority shall require the Contractor to provide during the Contract Period. Any levels or aggregate values of Services referred to in the Schedules are indicative only and shall not be binding on the Authority.
- 6.2 The Contractor shall accommodate any changes to the needs and requirements of the Authority in the provision of the Services hereunder, in accordance with Condition 37.

**7. CONDITIONS AFFECTING PROVISION OF SERVICES**

- 7.1 With respect to the provision of the Core Services at Heywood, the Contractor shall be deemed to have satisfied himself with regard to the nature and extent of the Services, the means of communication with and access to the site, the supply of and conditions affecting labour, the suitability of the equipment necessary for the performance of the Services, subject to all such matters being discoverable by the Contractor.
- 7.2 The parties hereby acknowledge their intention that the Nelson Service, the Willand Service and the DCS Heywood Service will transfer to, and from the Relevant Transfer Date will be provided by, the Contractor on an "as is" basis substantially the same as services provided, and the performance standards achieved, by the Authority prior to the Commencement Date.
- 7.3 With respect to each of the Nelson Service, the Willand Service and the DCS Heywood Service, the Contractor may until the date 3 months after the Relevant Transfer Date conduct such due diligence activity as it requires regarding any aspect of or related to such services including without limitation available resources and the level of past performance achieved by the Authority. The Authority shall provide the Contractor with information and assistance as the Contractor may require in relation to such due diligence. Following such due

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diligence the Contractor shall be entitled to accept the service description and performance standards set out in Annex C to Section 3 or submit a Variation to reflect actual services and performance standards achieved. The Authority shall not unreasonably withhold or delay its agreement to such Variation.

**8. CONTRACTOR'S STATUS**

- 8.1 The Contractor shall perform the Service as principal and not as agent of the Authority. The Contractor shall not say or do anything that may lead any other person to believe that the Contractor is acting as the agent of the Authority.
- 8.2 Nothing in this Contract shall be deemed to constitute or create a partnership (as defined in the Partnership Act 1890) between the Parties.
- 8.3 Nothing in this Contract shall render the Authority liable to indemnify the Contractor in respect of any liability of any kind incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either any term of this Contract or any negligence on the part of the Authority, its staff or agents.

**9. EQUIPMENT**

- 9.1 The Contractor shall provide all the Equipment necessary for the provision of the Core Services at Heywood.
- 9.2 The Contractor shall maintain all items of Equipment in good and serviceable condition.
- 9.3 The Authority shall provide (to a standard as may reasonably be specified by the Contractor and in any case no less than that provided by the Authority prior to the date of this Contract) without charge to the Contractor any and all equipment, materials, supplies and services that are agreed to be necessary for the Contractor's provision of the Nelson Service, the Willand Service and the DCS Heywood Service.

**10. STAFF**

- 10.1 The Contractor shall ensure, at all times that this Contract be performed by appropriately qualified and trained personnel with appropriate skill, care and diligences. For the avoidance of doubt, the Authority shall be relying upon the Contractor's skill, expertise and experience in the provision of the Service. Any statements made or advice provided by the Contractor as part of its provision of the Services will be made in good faith and the Contractor shall not knowingly

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provide inaccurate documents conceived, originated, made or developed by the Contractor in connection with the provision of the Service.

- 10.2 The Contractor shall provide, at all times and at its own expense, the number of Staff required to fulfil his obligations under the Contract.

**11. KEY STAFF**

- 11.1 The Contractor shall make available the Key Staff as stipulated in Appendix B of Section 5: Administration Instruction, for the entire period required to fulfil the functions for which they are employed or engaged (provided that the Contractor may remove or replace Key Staff in accordance with its normal business procedures) and shall nominate one or more of the Key Staff to act as the Contractor's Representative. The Contractor's Representative is authorised to act on behalf of the Contractor on all matters related to this Contract. In the event of any of the Key Staff being removed from provision of the Services by the Contractor the Contractor shall replace such individuals with other individuals of equivalent or greater experience and competence unless otherwise agreed by the Authority (such agreement not to be unreasonably withheld).

- 11.2 Subject to Condition 11.3, if the Authority gives the Contractor notice on reasonable grounds in writing that any person is not to be involved in or is to be removed from involvement in the performance of the Contract, due to the reasons stated in Condition 11.3, the Contractor shall comply with such a notice and if required by the Authority the Contractor shall replace any such person removed under this condition with another suitably qualified person as above in Condition 10.1.

- 11.3 The Authority shall be entitled to provide notice in accordance with Condition 11.2 on the grounds:

11.3.1 of gross misconduct of the relevant individual;

11.3.2 of a material breach of security;

11.3.3 of wilful damage to the premises or to any property of the Authority;

11.3.4 that the individual's personal behaviour represents a threat to the safety of others; or

11.3.5 that the individual's personal behaviour is materially damaging to the reputation of the Authority;

provided that the Authority shall not exercise this right unreasonably and shall, wherever possible, afford the Contractor written notice of any concerns together

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with a reasonable opportunity to address the Authority's stated concerns prior to the Authority excising its rights under Condition 11.2.

**12 NON - SOLICITATION**

12.1 The Contractor shall not, without Approval, either during the Contract Period and within one year of its termination either:

12.1.1 solicit the employment of any Personnel; or

12.1.2 offer to engage or employ in connection with the provision of services to the Authority, or any other department, agency or office of the Crown which are similar to those presently provided by the relevant individual in the normal course of his or her duties, any member of the Personnel with whom the Contractor shall have had dealings in connection with this Contract.

12.2 The Authority shall not without the express written consent of the Contractor either during the Contract Period and within one year of its termination solicit the employment of any member of Staff.

12.3 No breach of this Condition shall be deemed to have occurred where an individual becomes an employee of the Contractor or the Authority, as the case may be, ("New Employer") as a result of a response by that individual to an advertisement placed by or on behalf of the New Employer where it is apparent from the wording of the advertisement, the manner of its publication or otherwise that the principal purpose of the advertisement was not the solicitation or recruitment of members of the Staff (or the Personnel as the case may be) and that the advertisement was equally likely to attract applications from individuals who were not members of the Staff (or the Personnel, as the case may be).

**13. STANDARDS**

13.1 Materials and processes used in connection with the provision of the Core Services shall be in accordance with the standards set out in Section 3: Business Requirement.

13.2 On the request of the Authority's Representative, the Contractor shall provide proof to the Authority's reasonable satisfaction that the materials and processes used, or proposed to be used, conform to those standards.

**14. TRANSFER OF RESPONSIBILITY ON EXPIRY OR TERMINATION**



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- 14.1 The Contractor acknowledges that on termination or expiry of this Contract for any reason, the continuity of the Service is of paramount importance. The Contractor shall minimise disruption caused and assist (subject to payment at the Contractor's prevailing rates) with the implementation of any contingency plan proposed by the Authority to deal with the effects of such termination or expiry in so far as it is reasonably practicable to do so.
- 14.2 Six months prior to expiry of this Contract, or following notice of termination for any reason, the Contractor and the Authority shall meet to discuss and agree a plan of actions (including but not limited to those actions set out in Condition 14.3) to be carried out in the event of a transfer of responsibility for the Services. The Contractor shall, promptly provide such assistance and comply with such timetable as the Authority may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Service in the period immediately before the expiry or other termination of this Contract subject to payment in accordance with Condition 14.4 where such assistance or compliance requires resource additional to the Contractor's normal operational activities. The Contractor shall ensure that its sub-contractors are under a similar obligation. The Authority shall be entitled to require the provision of such assistance both prior to and after the expiry or other termination of this Contract.
- 14.3 The Contractor shall without additional charge:
- 14.3.1 provide TUPE information in relation to the Staff pursuant to Condition 15.10;
  - 14.3.2 provide details including volumes of the records and data held by the Contractor;
  - 14.3.3 provide lists of equipment used by the Contractor in the provision of the Services;
  - 14.3.4 provide a copy of the Authority's Data to the Authority pursuant to Condition 14.13;
  - 14.3.5 deliver to the Authority documents and data in the possession or control of the Contractor or its subcontractors which relate to performance, monitoring, management and reporting of the Service, including the documents and data, if any, referred to in Section 5: Administration Instructions, and which the Contractor are otherwise obliged to disclose under this Contract or otherwise beneficial to orderly transfer.
- 14.4 With the exception of those activities set out in Condition 14.3, the Contractor shall be entitled to payment at the Contractor's (or, as applicable, sub-

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contractors) then prevailing rates for any assistance provided pursuant to Conditions 14.1 and 14.2. For the avoidance of doubt all assistance after expiry or termination will be chargeable.

- 14.5 The Contractor shall not knowingly or purposely obstruct the ability of the Authority to ensure an orderly transfer of responsibility for provision of the Service.
- 14.6 Within 21 days of being so requested by the Authority's Representative, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, database and volume information necessary to enable the Authority to issue tender documents for the future provision of the Services.
- 14.7 The Authority shall take all necessary precautions to ensure that the information referred to in Condition 15.1 is given only to service providers who have qualified to tender for the future provision of the Services. The Authority shall require that such service providers shall treat that information in confidence; that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- 14.8 The Contractor shall indemnify the Authority against any reasonable claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under Section 2: Terms and Conditions, Condition 15.10.
- 14.9 The Contractor shall not, within the period of six months of expiry of this Agreement or, following any notice of early termination, within six months of the relevant termination date:
- 14.9.1 move any persons in his employment into the undertaking or relevant part of an undertaking which provides the Services, who do not meet the standards of skill and experience, or who are in excess of the number, required for the purposes of the Contract;
- 14.9.2 make any substantial change in the terms and conditions of employment of any Staff which is inconsistent with the Contractor's established employment and remuneration policies.
- 14.10 Where, in the opinion of the Authority's Representative, any change or proposed change in the Staff in the undertaking or relevant part of an undertaking, or any change in the terms and conditions of employment of such Staff, would be in breach of Condition 14.8 as above, the Authority shall have

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the right to make representations to the Contractor against the change or proposed change

- 14.11 The Contractor shall allow reasonable access to their premises, in the presence of the Authority's Representative, to any person representing any service provider whom the Authority has selected to tender for the future provision of the Services.
- 14.12 In accordance with Condition 14.2, the Authority shall give the Contractor 7 days' notice of a proposed visit to the Contractor's premises as in Condition 14.9 above, together with a list showing the names of all persons who will be attending those premises. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- 14.13 On termination or expiry of this Agreement, within 10 working days of being so requested by the Authority's Representative, the Contractor shall transfer to the Authority, or any Person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Contractor in its provision of the Services.

## **15 TRANSFER OF UNDERTAKINGS**

### **Transfer of Transferring Employees to the Contractor**

- 15.1 The parties acknowledge that the Transfer of Undertakings (Protection of Employment) Regulations 1981 applies to this Contract and the contracts of employment of the Transferring Employees will transfer to the Contractor with effect from the Relevant Transfer Date. The parties shall use all reasonable endeavours to facilitate the smooth and efficient transfer of such contracts of employment (including without limitation and where applicable through communication and liaison with the Incumbent) prior to and following the Relevant Transfer Date.
- 15.2 For the purposes on Condition 15.1 the Relevant Transfer Date shall be:
- 15.2.1 In respect of Transferring Employees employed at Heywood (that transfer from the Incumbent) and set out in Annex 1 of Appendix F to Section 5, 1st July 2004;
- 15.2.2 In respect of Transferring Employees employed at Nelson and set out in Annex 3 of Appendix F to Section 5, 1st August 2004;

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- 15.2.3 In respect of Transferring Employees employed at Willand and set out in Annex 4 of Appendix F to Section 5, 1st October 2004;
- 15.2.4 In respect of Transferring Employees employed at DCS at Heywood and set out in Annex 2 of Appendix F to Section 5, 1st July 2004;
- 15.2.5 In respect of Transferring Employees employed at the DWP Filestore Sites and set out in Annex 5 of Appendix F to Section 5, such date during the Migration Period as the parties shall agree in the Migration Plan.
- 15.3 In respect of the DWP Filestore Sites, the Authority shall provide the Contractor with detailed information (in the form of an amended version of Annex 5 of Appendix F to Section 5) in respect of any and all Transferring Employees that will transfer pursuant to Condition 15.1 no later than four months before (and the Authority shall use its reasonable endeavours to provide such information six months before) the Relevant Transfer Date
- 15.4 The Authority hereby warrants, undertakes and represents to the Contractor that the contents of Appendix F to Section 5 relating to the Transferring Employees at the Relevant Transfer Date are complete and accurate and the Authority hereby indemnifies and holds harmless the Contractor against any loss, liability, cost, damage, expense or fee suffered or incurred by reason of any breach of this warranty, undertaking and representation by the Authority
- 15.5 The Authority undertakes to the Contractor that it will indemnify and keep indemnified and fully reimburse on demand the Contractor against all awards, losses, damages, costs, demands, liabilities, interest and expenses (including all reasonable legal fees) which the Contractor may suffer, sustain, incur, pay or be put to by reason or on account of or arising from any action, claim or other legal recourse of any kind by:
- 15.5.1 any Transferring Employee or any trade union or staff association recognised by the Authority (or as applicable the Incumbent) in relation to the Transferring Employees arising from any act or omission or continuing act or omission of the Authority (or as applicable the Incumbent) on or prior to the Relevant Transfer Date;
- 15.5.2 any present or former employee of the Authority or as applicable the Incumbent (other than a Transferring Employee) or any trade union or staff association recognised by the Authority (or as applicable the Incumbent) in relation to such present or former employees arising from any act or omission or continuing act or omission of the

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Authority (or as applicable the Incumbent) on, prior to or following the Relevant Transfer Date.

- 15.6 If any contract of employment other than that of a Transferring Employee or any collective agreement has effect after the Relevant Transfer Date as if originally made between the Contractor and any present or former employee of the Authority (or as applicable the Incumbent) as if originally made between the Contractor and any trade union by virtue of the Transfer Regulations, the Contractor shall within sixty (60) days of becoming aware of any such contract of employment or collective agreement be entitled to terminate such contract or agreement forthwith and the Authority shall indemnify and reimburse the Contractor in respect of all losses, damages, costs, demands, liabilities, interest and expenses (including all reasonable legal fees) arising out of or in relation to such contract or collective agreement (whether arising before, on or after the Relevant Transfer Date) or the termination thereof.
- 15.7 The Contractor shall indemnify the Authority against all awards, losses, damages, costs, demands, liabilities, interest and expenses (including reasonable legal costs) which the Authority incurs by reason or on account of or arising from any action, claim or other legal recourse by any Transferring Employee arising from any act or omission of the Contractor following the Relevant Transfer Date
- 15.8 The Contractor shall indemnify the Authority and keep it indemnified against any claim against the Authority arising from any failure on the part of the Contractor to comply with any of its obligations pursuant to Regulation 10 of the Regulations including all costs, awards and expenses in connection therewith.
- 15.9 The Authority shall indemnify the Contractor and keep it indemnified against any claim against the Contractor arising from any failure on the part of the Authority (or as applicable the Incumbent) to comply with any of its obligations pursuant to Regulation 10 of the Regulations including all costs, awards and expenses in connection therewith.

**Transfer on expiry and termination**

- 15.10 Where, in the opinion of the Authority's Representative, the Transfer of Undertakings (Protection of Employment) Regulations 1981 are likely to apply on the termination or expiration of the Contract, the information to be provided by the Contractor under Condition 14.6 shall include, as applicable, accurate information relating to the Staff who would be transferred under the same terms of employment under those Regulations, including in particular:-

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- 15.10.1 the number of Staff who would be transferred, but with no obligation on the Contractor to specify their names;
- 15.10.2 in respect of each of those members of Staff their age, sex, salary, length of service, hours of work, overtime hours and rates, any other factors affecting redundancy entitlement and any outstanding claims arising from their employment;
- 15.10.3 the general terms and conditions applicable to those members of Staff, including probationary periods, retirement age, periods of notice, current pay agreements, working hours, entitlement to annual leave, sick leave, maternity and special leave, terms of mobility, any loan or leasing schemes, any relevant collective agreements, facility time arrangements and additional employment benefits.
- 15.11 The Contractor agrees that if upon termination of this Contract, circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 1981 are applicable, the Contractor shall in good faith co-operate with the Authority in the disclosure of information and the provision of other assistance so as to facilitate such outcome in relation to the relevant employees as may be acceptable to the Parties
- 15.12 The Contractor shall comply with the requirements of those Regulations in respect of the Personnel identified (who will have been employed in the undertaking, or a relevant part of the undertaking, immediately before its transfer to the Contractor).
- 15.13 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person currently or previously employed by the Authority or by the Contractor for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise (and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by the Authority) resulting from any act or omission of the Contractor on or after the Commencement of Full Operations and prior to the date of expiry or earlier termination of this Agreement except where such claim arises as a result of any breach of obligations (whether contractual, statutory, at common law or otherwise) by the Authority.
- 15.14 In the event of any transfer of Staff to the Authority and/or a replacement contractor on expiry or earlier termination of this Agreement, the Authority shall indemnify the Contractor against all awards, losses, damages, costs, demands, liabilities, interest and expenses (including reasonable legal costs) which the Contractor incurs by reason or on account of or arising from any action, claim or other legal recourse by any such transferring staff arising from any act or

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omission of the Authority and/or replacement contractor on or following the date of such transfer.

- 15.15 If this Agreement expires or is terminated for any reason whatsoever and the Transfer of Undertakings ( Protection of Employment ) Regulations 1981 are or may be deemed not to transfer the Staff employed in the provision of the Services, the Authority shall or the Authority shall procure that a new Contractor shall, offer employment to all of the staff employed in the provision of the Services on the same terms and conditions as before the date of expiry or termination of the Contract and the Authority shall indemnify the Contractor and keep it fully indemnified at all times against all liability to, or in respect of, the Staff arising out of the employment of or the termination of employment of any of the staff on or after the date of expiry or termination of the Contract

**Redundancy of Transferring Employees**

- 15.16 If the Contractor makes redundant any Transferring Employee (other than any Transferring Employee that transfers from the Incumbent or who is fully engaged by the Contractor in the Contractor's provision of records management services for clients other than the Authority and which is outside the scope of this Agreement) at any time during the Migration Period the Authority shall indemnify and reimburse the Contractor in respect of all losses, damages, costs, demands, liabilities, interest and expenses (including all reasonable legal fees and any augmentation cost of providing early retirement pensions on redundancy) arising out of or in relation to such redundancy.

**16 PAYMENT AND VALUE ADDED TAX**

- 16.1 In consideration of the provision of the Services by the Contractor in accordance with the terms of the Contract, the Authority shall pay the Contract Price, calculated in accordance with Section 4: Schedule of Prices and Rates and the Value Added Tax Act 1994.
- 16.2 The Contractor shall submit an original and a copy invoice to the Authority at monthly intervals in accordance with the provisions of section 4 in respect of the Services provided by the Contractor. Each invoice shall contain all appropriate references, a detailed breakdown of the Services, with the VAT amount being shown separately and the appropriate Prices and Rates and shall be supported by any other documentation reasonably required by the Authority's Representative to substantiate the invoice.

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- 16.3 Payment shall be made to the Contractor within 30 days of receipt by the Authority (at its nominated address(es) for invoices) of the Contractor's valid invoice.
- 16.4 The Authority shall pay the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable at the applicable VAT rate on the value of the Services provided in accordance with the Contract.
- 16.5 . If the Contractor fails due to its default to provide the Services in accordance with the Service Levels specified in section 4, the Contractor shall credit the Authority with Service Credits at the level and in the manner specified in section 4. Any Service Credits credited to the Authority shall be in full and final settlement of the Contractor's financial liability, and shall be the Authority's sole and exclusive remedy, for any loss or damage incurred by the Authority for matters which attract or are within the scope of the provision of such Service Credits.
- 16.6 The Contractor shall furnish to the Authority the name, and if applicable, the value added tax registration number of any agent, supplier or sub-contractor of the Contractor prior to the commencement of any work under this Contract by that agent, supplier or sub-contractor.

**17 NOT USED**

**18 PAYMENT TO SUB-CONTRACTORS**

Where the Contractor enters into a sub-contract for the provision of any part of the Services, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice as defined by the terms of that sub-contract.

**19 RECOVERY OF SUMS DUE**

- 19.1 Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of this Contract), the Authority may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Contractor under this Contract.
- 19.2 The Authority shall give at least 21 days' notice to the Contractor of its intention to make a deduction under Condition 19.1 above, giving particulars of the sum to be recovered and the contract under which the payment arises from which the deduction is to be made.



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- 19.3 Any overpayment by the Authority to the Contractor, whether of the Contract Price or of Value Added Tax, shall be a sum of money recoverable by the Authority from the Contractor.
- 19.4 The Authority shall recover any monies paid which are found not to be due by deducting such sums from any subsequent payment due to the other. The Authority shall consult the other by issue of a written notice before making any deductions.

**20. INTELLECTUAL PROPERTY RIGHTS**

- 20.1 The Contractor acknowledges that the Authority's Data is the property of the Authority and the Authority hereby reserves all Intellectual Property Rights which may subsist in the Authority 's Data.
- 20.2 Subject to Condition 20.1, the Contractor (or its third party licensors) shall retain the Intellectual Property Rights in any material generated by or on behalf of the Contractor in the performance of the Services. In performing the Services the Contractor shall obtain all necessary licences before utilising any material which is or may be subject to any Intellectual Property Rights other than those referred to in Condition 20.1 above.
- 20.3 If any material or software generated specifically for the performance of the Services by the Contractor contains components in which the Intellectual Property Rights are owned by the Authority or which comprise Confidential Information of the Authority, then the Contractor shall not use such material or software for any purpose other than the provision of the Services without either:
- 20.3.1 first removing such components; or
- 20.3.2 receiving the Authority's Approval for such use
- 20.4 The Contractor grants, or shall procure the relevant third party grants, to the Authority, a non-exclusive, non-transferable licence, sub-licence or other form of consent (as applicable) to use the FARIO Software in connection with the receipt of the Services subject always to the terms and conditions of the relevant third party's licence agreement with the Contractor (details of which shall, subject to any confidentiality requirements of the third party concerned and the Contractor, be disclosed to the Authority on request). The Authority warrants and undertakes to the Contractor that it will not use or otherwise deal with the FARIO Software other than in connection with the receipt of the Services and in accordance with such terms and conditions.

- 20.5 Subject to Condition 20.6 below, the Contractor shall indemnify the Authority
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against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from or incurred by the use by the Contractor, in the performance of the Services, or the use by the Authority following delivery by the Contractor, of any material which involves any infringement or alleged infringement of the Intellectual Property Rights of any third party.

- 20.6 The provisions of Condition 20.5 shall not apply in respect of any material which the Authority has supplied to the Contractor or which the Authority has specified for use by the Contractor or for delivery to the Authority.
- 20.7 The Authority shall indemnify the Contractor against all claims, proceedings, actions, damages, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis), expenses and any other liabilities arising from or incurred by the use by the Contractor, in the performance of the Services, of any material referred to in Condition 20.4 (or in respect of the Nelson Services, the Willand Services and the DCS Heywood Services, Condition 4.2.9) which involves any infringement or alleged infringement of the Intellectual Property Rights of any third party.
- 20.8 Where any claim is made by a third party in respect of any material referred to in Condition 20.5 or 20.7 above, the Party which is required to provide an indemnity under those provisions shall have the right to conduct, or take over the conduct of, the defence to the claim and to any proceedings or action brought by the third party.

## **21. DATA PROTECTION**

- 21.1 In circumstances in which the Authority is the Data Controller, and to the extent that the Contractor is a Data Processor of Personal Data under this Agreement, the Contractor shall:
- 21.1.1 act only on the written instructions of the Authority;
  - 21.1.2 not disclose Personal Data to any third parties other than to employees and sub-contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Services or to the extent required under a court order; and
  - 21.1.3 put in place all appropriate technical and organisational measures in accordance with good industry practice to prevent unauthorised or unlawful Processing of Personal Data or accidental loss or destruction or damage to Personal Data and shall ensure the reliability of staff having access to Personal Data.

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- 21.2 The Contractor further undertakes to use any information or other material disclosed to it in connection with the Contract solely for the purpose for which such information or other material was disclosed to it.

**22. ACCESS AND INFORMATION**

- 22.1 The Contractor shall provide (or procure provision of) access at all times to the Authority's internal and statutory auditors and their respective authorised agents to the Service Performance Records and /or premises and/or materials and shall provide all reasonable assistance during the currency of this Contract for the purposes of carrying out an audit of the Contractor's compliance with this Contract including activities, charges, performance security and integrity in connection therewith.
- 22.2 The terms of this Condition 22 shall include, without limitation, the right to carry out examinations into the economy, efficiency and quality of the Service and effectiveness with which the Contractor has used the Authority's resources in the performance of this Contract.
- 22.3 Any such access under this Condition 22 shall be in accordance with the Contractor's security and health and safety terms.
- 22.4 Without prejudice to the foregoing, in the event of an investigation into suspected fraudulent activity or other impropriety by the Contractor or any third party in relation to the Services, the Authority reserves for itself, any statutory auditors of the Authority and their respective authorised agents or any Crown Body the right of immediate access to the Service Performance Records and/or any premises and/or materials and the Contractor agrees to render all necessary assistance to the conduct of such investigation at all times during the currency of this Contract or at any time thereafter. For the avoidance of doubt, the Contractor shall only be repaid its reasonable expenses incurred in giving assistance pursuant to this Condition in the event that the result of such investigation reveals no fraudulent activity or other impropriety by the Contractor, its servants, agents or subcontractors.

**23. PUBLICITY**

- 23.1 Neither party (nor its sub-contractor(s), agents, servants, suppliers, employees and consultants) shall make any public statement relating to the existence or performance of the Contract without the prior consent of the other party.
- 23.2 The provisions of this condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

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**24. SECURITY**

- 24.1 The Contractor shall take all measures necessary to comply with the provisions of the Authority Policies set out at Appendix L relating to security which may be applicable to the Contractor in the performance of the Services. In the event of any change to such policies any resulting change to the Services or this Agreement shall be introduced in accordance with the change control procedure set out in Condition 37.
- 24.2 The Contractor shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that Staff have notice that all provisions referred to in Condition 24.1 above, will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.
- 24.3 Whilst on the Authority's Premises, staff shall comply with all security measures implemented by the Authority in respect of Personnel and other persons attending those Premises. The Authority shall provide copies of its written security procedures to the Contractor upon request.
- 24.4 The Authority shall have the right to carry out any search of Staff or of vehicles used by the Contractor at the Authority's Premises.
- 24.5 The Contractor shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible to the Authority for security matters and when required by the Authority by the Authorities Representative:
- 24.5.1 shall make any Staff identified by the Authority's Representative available to be interviewed by the Authority's Representative, or by a person who is responsible to the Authority for security matters, for the purposes of the investigation. Staff shall have the right to be accompanied by the Contractor's Representative and to be advised or represented by any other person whose attendance at the interview is acceptable to both the Authority's representative and the Contractor's Representative; and
- 24.5.2 shall, subject to any legal restriction on their disclosure, provide all documents, records or other material(s) of any kind which may reasonably be required by the Authority or by a person who is responsible to the Authority for security matters, for the purposes of the investigation, so long as the provision of that material(s) does not prevent the Contractor from performing the Services. The Authority shall have the right to retain any such material(s) for use in connection

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with the investigation and, so far as possible shall provide the Contractor with a copy of the material(s) retained.

**25. CONFIDENTIALITY**

- 25.1 Where documents and/or information are expressly stated by a party to be confidential, such documents and/or information shall not be used by the other party except for the purposes for which they were made available and such documents and information shall not be disclosed by such other party to any third party (except for the proper performance of this Contract) without prior consent. Each party shall ensure that where any such documents and/or information is disclosed to its employees or subcontractors, such employees or subcontractors comply with similar obligations of confidentiality.
- 25.2 The Contractor shall ensure that its employees have notice of and are aware of section 123 of the Social Security (Administration) Act 1992, and that such employees are aware that the provisions of those Acts will apply to them during the continuance and after the termination of this Contract.
- 25.3 The Contractor shall ensure that all Staff sign a confidentiality undertaking before commencing work in connection with the provision of the Services.
- 25.4 The Contractor undertakes to make no reference in any advertising or other promotional material to this Contract without the prior written consent of the Authority.
- 25.5 The Contractor shall not at any time take any photographs of the Authority's premises or any part thereof, and shall take all reasonable steps to ensure that no such photographs shall at any time be taken or published or otherwise circulated by its employees or subcontractors, unless the Contractor shall first have obtained Approval.
- 25.6 The Contractor shall not communicate with representatives of the general or technical press, radio, television or other communications media, on matters arising from or in connection with this Contract, without Approval.
- 25.7 Nothing in this Condition shall prevent the Authority –
- 25.7.1 disclosing such information relating to the outcome of the procurement process for the Contract as may be required to be published in the Supplement to the Official Journal of the European Communities in accordance with EC directives or elsewhere in accordance with requirements of United Kingdom government policy on the disclosure of information relating to government contracts;

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25.7.2 disclosing any information obtained from the Contractor:-

25.7.2.1 to any other department, office or agency of the Crown, or

25.7.2.2 to any Person engaged in providing any services to the Authority

for any purpose relating to or ancillary to the Contract; or

25.7.3 disclosing information obtained from the Contractor under Section 2, Terms and Conditions, Condition 14.6 subject to the obligations imposed by Section 2: Terms and Conditions, Condition 15.1.

25.8. In disclosing information the Authority shall disclose only the information that is necessary for the purpose concerned and shall require that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

25.9. Nothing in this Condition shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of confidential information or an infringement of any Intellectual Property Rights.

25.10. The Contractor shall not use any confidential information obtained from the Authority for the solicitation of business from the Authority or any other part of the Crown.

25.11. The obligations imposed by this Condition shall continue to apply after the expiry or termination of the Contract.

**26. FRAUD**

26.1 The Contractor shall safeguard the Authority's funding of the Service against fraud generally and, in particular, fraud on the part of the Contractor's directors, employees or subcontractors. The Contractor shall pay the utmost regard to accuracy of invoices for the Services. The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring.

26.2 The Contractor shall not knowingly engage, and will co-operate with the Authority and assist it in the identification of, Staff who may be unlawfully claiming state benefit. The Authority may from time to time brief the Contractor as to the co-operation and assistance it requires including the provision of information regarding fraud by participants. The Authority shall

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provide a named contact or telephone answering service for receiving such information.

- 26.3 The Contractor shall use reasonable endeavours to ensure that its employees and subcontractors (and their respective employees) are not claiming any state benefit, where payment of that benefit is precluded due to earnings. The Contractor shall further use all reasonable endeavours to ensure that its employees and subcontractors (and their respective employees) who are not EC nationals are legally entitled to be resident in the United Kingdom and have a work permit, where applicable.

**27. RIGHT OF AUDIT**

- 27.1 The Contractor shall keep secure and maintain until six years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.

- 27.2 The Contractor shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract.

- 27.3 For the purpose of:

27.3.1 the examination and certification of the Authority's accounts; or

27.3.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 or any re-enactment thereof of the economy, efficiency and effectiveness with which the Authority has used its resources,

27.3.3 the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and / or written explanations as he considers necessary. This Condition does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3)(d) and (5) of the National Audit Act 1983.

27.3.4 Legal title to all such records, accounts and related documents generated pursuant to this Contract shall vest in the Authority. Such records, accounts and documents shall be maintained by the Contractor at its premises for a period of seven years from the end of the financial year in

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which the last payment is made by the Authority under the terms of this Contract.

**28. INDEMNITY AND LIABILITY**

- 28.1 The Contractor shall indemnify the Authority against all expenses, liabilities, actions, losses, claims, damages or proceedings in respect of direct loss or damage to tangible property, whether belonging to the Authority, its personnel or otherwise, arising out of or in the course of or caused by the negligent act or omission or wilful Default of the Contractor in the provision of the Service, except to any extent (if any) that it was contributed to by the negligent act or omission or wilful Default of the Authority or of some other person acting as a servant or agent of the Authority.
- 28.2 Neither Party excludes or limits either Party's liability to the other for death or personal injury, arising from its negligence or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1972 or Section 2 of the Supply of Goods and Services Act 1982.
- 28.3 All property of the Contractor whilst on the Authority's premises shall be there at the risk of the Contractor and the Authority shall accept no liability for any loss or damage howsoever occurring to it, except to the extent (if any) that it was also caused or contributed to by the negligent act or omission or wilful Default of the Authority or some other person acting as a servant or agent of the Authority.
- 28.4 Subject always to Condition 28.2, the aggregate total liability for all direct losses, liabilities and damages of each of the parties to the other arising out of or in connection with this Contract (whether caused by negligence, by way of indemnity, or otherwise) shall in no event exceed ten million pounds (£10 million ).
- 28.5 Subject to Condition 28.6 below, in no event shall either Party be liable to the other for loss of profits, business, revenue, goodwill or consequential or indirect loss provided that this Condition 28.5 shall not be taken as limiting the right of either party to claim from the other party for additional operational or administrative costs, expenses, expenditure or charges rendered unnecessary in each case as a direct result of any Default by the other party.
- 28.6 Nothing set out in this Condition 28 shall limit the Contractor's right to recover and the Authority's obligation to pay any sums properly payable by the Authority to the Contractor pursuant to this Contract.
- 28.7 The Parties expressly agree that should any limitation or provision contained in this Condition be held to be invalid under any applicable statute or rules of law it shall to that extent be deemed omitted but if any Party thereby becomes



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liable for loss or damage which would otherwise have been excluded, such liability shall be subject to the other limitations and provisions as set out herein.

- 28.8 The Contractor shall hold employer's liability in respect of Staff in accordance with any legal requirement for the time being in force.

**29. INSURANCE**

- 29.1 The Contractor shall ensure that it and its subcontractors shall have at all material times in force adequate and suitable insurance to cover all claims referred to in Condition 28 above.
- 29.2 The Contractor, if requested, shall produce to the Authority evidence of insurance showing the actual coverage in force at the time of the request and shall give the Authority written notice before any such insurance is altered or cancelled.

**30. COMPLIANCE WITH LEGISLATION**

- 30.1 In carrying out this Contract the Contractor shall comply in all respects with all relevant legislation and in particular the Contractor shall:
- 30.1.1 not commit an act of discrimination rendered unlawful by any equal opportunities legislation including (without limitation) the Sex Discrimination Act 1975, the Race Relations Act 1976, or the Disability Discrimination Act 1995; and
  - 30.1.2 comply with all relevant requirements contained in or having effect under the legislation relating to health, safety and welfare at work; and
  - 30.1.3 comply with all relevant requirements of the Fair Employment & Treatment (Northern Ireland) Order 1998; and
  - 30.1.4 comply with the provisions of the National Minimum Wage Act 1998 and the Working Time Regulations 1998;
  - 30.1.5 acknowledge that in relation to its obligations under this Contract it is subject to the provisions of the Human Rights Act 1999 and shall;
  - 30.1.6 at all times act in accordance with the Human Rights Act in relation to its obligations under this Contract; and

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- 30.1.7 Where any of the Contractor's obligations under this Contract are carried out by a subcontractor, the Contractor shall ensure that the contract with the sub-contractor contains provisions equivalent to this Condition.
- 30.2 The Contractor shall not (and it is a condition of this Contract that in entering into this Contract it did not) offer to give, or agree to give, to any member, employee or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Authority or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract.
- 30.3 The attention of the Contractor is drawn to the Prevention of Corruption Acts 1889 to 1916. Any offence by the Contractor, its employees, subcontractors or by anyone acting on its behalf under this Contract or any other contract with the Crown under the Prevention of Corruption Acts 1889 to 1916 in relation to this Contract shall entitle the Authority to terminate this Contract and recover from the Contractor the amount of any loss resulting from such termination and/or to recover from the Contractor the amount or value of any gift, consideration or commission.
- 30.4 If and to the extent that there is a material change in any legislation or policy applicable to the Contractor's performance of the Services which requires the Contractor to undertake any additional activities or incur additional costs then such changes shall not be deemed to be included in the Charges and the Contractor shall be entitled to propose a Variation in accordance with Condition 37

**31. HEALTH AND SAFETY**

- 31.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Services.
- 31.2 The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of the Services.
- 31.3 The Contractor shall inform all Staff at the Authority's Premises of all known health and safety hazards and shall instruct those Staff in connection with any necessary safety measures.
- 31.4 Whilst on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Personnel and other Persons working on those Premises.

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31.5 The Contractor shall notify the Authority's Representative immediately in the event of any incident occurring in the performance of the Services on the Authority's Premises where that incident causes any personal injury or any damage to property which could give rise to personal injury.

31.6 The Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply to Staff in the performance of the Services.

**32. CONTRACTS (RIGHT OF THIRD PARTIES) ACT 1999**

32.1 The Parties do not intend that any Conditions of this Contract be enforceable by a third party.

**33. TRANSFER AND SUB-CONTRACTING**

33.1 The benefit and/or burden of this Contract may not be subcontracted, assigned or otherwise disposed of in whole or in part by the Contractor without Approval. Such consent may be given subject to any conditions which the Authority considers necessary, but will not be unreasonably withheld or delayed. The Authority reserves the right to withdraw its consent to any subcontractor where it has reasonable grounds to no longer approve of the subcontractor or the subcontracting arrangement. Notwithstanding the foregoing provisions of this Condition 33.1, the Contractor may assign or otherwise transfer or sub-contract this contract or any part thereof or any right or obligation hereunder for the purposes of a solvent amalgamation, re-organisation or reconstruction within the Contractor's Group.

33.2 On giving notice to the Contractor of not less than 30 days, the Authority shall be entitled to assign any or all of its rights under the Contract to any contracting authority as defined in Regulation 3(i)(a) and (b) of the Public Services Contracts Regulations 1993, provided that such assignment shall not materially increase the burden of the Contractor's obligations under the Contract.

33.3 Where the Contractor subcontracts the delivery of all or any part of the Service, the Contractor shall nonetheless remain accountable in all respects to the Authority for the full and proper delivery of the Service.

33.4 The Contractor shall include in its contracts with suppliers or subcontractors engaged for the purposes of providing the Services a written condition undertaking to make payment for the supply of their goods and/or services within 30 days of receipt of the supplier's or subcontractor's invoice (provided

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that such goods and/or services have been supplied in accordance with the relevant contract).

- 33.5 The Contractor shall satisfy itself that its sub-contractors (and/or their respective employees) are suitable in all respects to provide the Service.
- 33.6 The Contractor shall forthwith notify the Authority immediately in writing of any claim brought against the Contractor arising out of or relating to the Contractor's provision of the Service including any claim made against any subcontractor of the Contractor of which the Contractor receives notification or otherwise becomes aware.

**34. SERVICE OF NOTICES AND COMMUNICATION**

- 34.1 Except as otherwise expressly provided within the Contract, no service of notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 34.2 Any notice under this Contract which is to be given by either party to the other shall be given by letter (sent by hand or by post or by registered post or by recorded delivery service) or transmitted by telex, teletext, facsimile transmission or other means of telecommunication, confirmed by a written letter to the Authority Representative (in the case of the Authority) or to the address for the Contractor's Representative set out in this Contract (in the case of the Contractor). Such notice or communication shall be deemed effectively given on the day when in the ordinary course of the means of the transmission it would first be received by the addressee in normal business hours. For the avoidance of doubt, receipt of any such communication shall not be construed as agreement to its contents.
- 34.3 Either Party may change its address for service of notice given in accordance with this Condition.
- 34.4 Any correspondence relating to this Contract shall quote the reference number set out in the Recitals to this Contract.

**35. SEVERABILITY**

- 35.1 If any provision of this Contract shall be held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract and shall not in any way affect the validity or enforceability of the remaining provisions of

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this Contract. The Parties will, agree a replacement provision which, as far as possible, retains the intent of the prohibited clause.

**36. WAIVER**

- 36.1 No delay by or omission of either Party in exercising any right, power, privilege or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.
- 36.2 No waiver shall be effective unless it is communicated to the other party in writing.
- 36.3 A breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

**37. CHANGE CONTROL – AMENDMENT AND VARIATION**

- 37.1 Any requirement for a change to the Services or this Contract, or for the provision of additional services or facilities shall be subject to Change Control Procedure set out in this Condition.
- 37.2 The Contract shall not be varied unless such variation is made in writing by means of a Variation to Contract Form as set out in Section 5: Administration Instructions, Appendix D.
- 37.3 In the event of an emergency the Authority shall have the right to vary the Contract by oral instructions given by the Authority's Representative, which shall be confirmed by the issue of a Variation to Contract Form within 7 days.
- 37.4 The Authority shall have the right to vary the Services at any time, subject to the Variation being related in nature to the Services being provided and to agreement on amendments to the Contract Price and any other relevant amendments to this Contract in accordance with the Change Control Procedure, and no such Variation shall vitiate the Contract.
- 37.5 The Contractor may request a Variation provided that:
  - 37.5.1 the Contractor shall notify the Authority's Representative in writing of any additional or changed requirement which it considers should give rise to a Variation;
  - 37.5.2 any proposed Variation shall be fully supported by a proposal as detailed in Condition 37.6 below.

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- 37.6 The Contractor, within 14 days of being requested by the Authority's Representative or where requesting a Variation pursuant to Condition 37.5 above, shall submit an initial proposal to the Authority, such proposal to contain at least the following information:
- 37.6.1 a description of the work together with the reason for the proposed Variation;
  - 37.6.2 the price, where applicable;
  - 37.6.3 details of the impact, if any, on other aspects of the Contract.
- 37.7 The price for any Variation shall, unless otherwise agreed between the Parties, be calculated in the following order of precedence:
- 37.7.1 using the Prices or Rates;
  - 37.7.2 prices pro-rata to the Prices or Rates;
  - 37.7.3 prices based upon the Prices or Rates.
- 37.8 The Authority shall either approve or reject any Variation proposed by the Contractor.
- 37.9 In the event that the Contractor disputes any decision by the Authority to reject a proposed Variation or contends that a proposed Variation is outstanding or continues to be required, the Contractor shall update the information contained in his proposal for the proposed Variation every Month and shall send the updated information to the Authority.
- 37.10 A Variation shall not be valid unless signed by the Authority's Representative and the Contractor's Representative (together, if relevant, with any associated supporting and/or amplifying documents) shall where applicable constitute an amendment to the Contract.
- 37.11 Any change made by the Contractor which has not previously been approved shall be undertaken entirely at the expense and liability of the Contractor.
- 37.12 In circumstances of an urgent requirement by the Authority, an e mail from an Authority's representative will be taken as approval to proceed and payment will be accepted by the Authority. A variation shall follow within 5 working days.

**38. TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY**

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- 38.1 This Contract may be terminated at any time by the Authority with immediate effect by notice in writing to the Contractor if the Contractor:
- 38.1.1 undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988 otherwise than for the purpose of solvent reconstruction or amalgamation; or
  - 38.1.2 passes a resolution that it be wound up or that an application be made for an administration order or the Contractor resolves to enter into a voluntary arrangement with its creditors; or
  - 38.1.3 a receiver, liquidator, administrator, supervisor or administrative receiver is appointed in respect of that Contractor's property, assets or any part thereof or the Court orders that the Contractor be wound up otherwise than for the purpose of solvent reconstruction or amalgamation, or a receiver of all or any part of its assets is appointed; or
  - 38.1.4 is unable to pay its debts in accordance with Sections 123 of the Insolvency Act 1986; or
  - 38.1.5 in England and Wales, has a petition presented for the Contractor's bankruptcy being an individual or the Contractor makes any composition or arrangement with or for the benefit of creditors or makes any conveyance or assignment for the benefit of creditors; or
  - 38.1.6 in Scotland, becomes apparently insolvent within the meaning of Section 7 of the Bankruptcy (Scotland) Act 1985; or
  - 38.1.7 being a firm or a number of persons acting together in any capacity, any event referred to in sub-clause 26.1.5 or 26.1.6 occurs in respect of any partner in the firm or any of those persons to the extent that the Authority has reasonable cause to believe that the financial security of the firm is in jeopardy.
- 38.2 The Authority may only exercise its right under Condition 38.1.1 above, within 6 months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Authority promptly when any change of control occurs.

**39. TERMINATION ON DEFAULT**

- 39.1 In the event of any material breach of this Contract by either party, the other party shall be entitled to serve a notice requiring the breach to be remedied within a reasonable period specified in the notice, not being longer than 30

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calendar days. If the breach is not capable of remedy or has not been remedied before the expiry of the specified period to the reasonable satisfaction of such other party, such other party may terminate the Contract with immediate effect by notice in writing.

**40. CONTRACTOR DEFAULT**

40.1 For the purposes of this Condition, the following definitions shall have the meanings set out below:

40.2 “Minor Breach” shall mean a delay or non-performance by the Contractor of its obligations hereunder which does not materially, adversely and subsequently affect the performance of the Service;

40.3 “Serious Breach” shall mean any breach (or series of Minor Breaches) by the Contractor of its obligations hereunder which adversely, materially and substantially affect the performance or delivery of the Service;

40.4 Without prejudice to any other remedy, in the event of a Minor Breach, the Authority may adopt the following procedure:

40.4.1 The Authority may serve notice on the Contractor specifying that it is a formal warning notice, giving full details of the breach and requiring the Contractor’s Representative to meet with the Authority’s Representative forthwith;

40.4.2 Within 10 working days of receipt of notification under Condition 40.4.1 above the Contractor’s Representative shall meet with the Authority’s Representative to discuss why the breach has occurred and how it may be remedied. Notwithstanding any other remedy under this Contract, the Authority shall be entitled to:

- (i) require the Contractor to promptly re-perform or replace the relevant part of the Service; or
- (ii) otherwise require that the Minor Breach is remedied within a reasonable period of time taking into account all the circumstances in each case without additional charge to the Authority.

40.5 In the event that no agreement is reached after having followed the steps in Condition 40.4 above, the Parties may then adopt the procedure pursuant to Condition 44, below.



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40.6 Without prejudice to any other remedy, in the event of a Serious Breach, the Authority may adopt the following procedure:

40.6.1 The Authority shall serve written notice on the Contractor giving full details of the breach and requiring the Contractor's Representative to meet with the Authority's Representative forthwith;

40.6.2 Upon receiving notification under Condition 40.6.1 above, the Contractor's Service Manager shall arrange to meet with the Authority's Representative forthwith to determine in good faith a contingency plan as appropriate in all the circumstances.

40.7 In the event that no contingency plan is activated or the Contractor fails to remedy the Serious Breach within a reasonable time after having followed the procedures under this Condition the Parties may deal with such breach in accordance with Condition 44 below.

40.8 For the avoidance of doubt nothing in this Condition shall in any way affect or prejudice any of the rights of the Authority under this Contract including its right to terminate under Condition 39.

**41. BREAK**

41.1 This Contract may be terminated by the Authority giving the Contractor at least 12 months written notice such notice commencing following the Migration Period. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

**42. CONSEQUENCES OF TERMINATION**

42.1 If the Authority terminates the Contract for whatever reason, the Authority shall pay to the Contractor the Outstanding Funding.

42.2 If the Authority terminates the Contract, or terminates the provision of any part of the Services, under Condition 41 above, the Authority shall reimburse the Contractor in respect of:

42.2.1 any loss, actually and reasonably incurred by the Contractor as a result of the termination, provided that the Contractor takes reasonable steps, consistent with the obligation to provide the Services during the period of notice, to terminate all contracts with sub-contractors on the best available terms, to cancel all capital and recurring cost commitments, and to reduce Equipment and labour costs as appropriate; and

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42.2.2 an amount per year for upto three years following the date of termination calculated as follows:

- (a) in respect of the first year following the date of termination the Authority shall pay the Contractor 75% of the Base Amount;
- (b) in respect of the second year following the date of termination the Authority shall pay the Contractor 50% of the Base Amount;
- (c) in respect of the third year following the date of termination the Authority shall pay the Contractor 25% of the Base Amount.

In each case the “Base Amount” shall be 17% of the total charges (where relevant taking account of activity and business volumes) paid and payable by the Authority for the Services in the twelve months prior to the termination date.

42.3 For the purposes of Condition 42.2 as above, the Contractor shall submit to the Authority's Representative within a reasonable timescale to be agreed between the parties a fully itemised and costed list, with supporting evidence, of all losses incurred by the Contractor as a result of the termination of the Contract, or the termination of any part of the Services.

42.4 The Authority shall not be liable under Condition 42.2 above, to pay any sum which, when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the provision of the Services had been completed in accordance with the Contract.

#### **43 REMEDIES CUMULATIVE**

43.1 Except as otherwise expressly provided by the Contract, all remedies available for breach of this Contract are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

#### **44. DISPUTE RESOLUTION**

44.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.

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- 44.2 If the dispute cannot be resolved by the Parties pursuant to Condition 44.1 above, the dispute may, by agreement between the Parties, be referred to mediation pursuant to Condition 44.4 below.
- 44.3 The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to Condition 44.2 above.
- 44.4 The procedure for mediation and consequential provisions relating to mediation are as follows, and during this procedure neither party shall refer any dispute to the court:
- 44.4.1 A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon the identity of the Mediator within 14 days after a request by one Party to the other (provided that there remains agreement for mediation), or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator;
- 44.4.2 The Parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
- 44.4.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 44.4.4 If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by both the Authority's Representative and the Contractor's Representative;
- 44.4.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties;
- 44.4.6 If the Parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed, or such longer period

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as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

**45. EURO**

45.1 Any legislative requirement to invoice and account for the services in Euro, instead of and/or in addition to Sterling, shall be implemented by the Contractor at nil charge to the Authority.

45.2 The Authority shall provide all reasonable assistance to facilitate such changes.

**46. ENVIRONMENTAL REQUIREMENTS**

46.1 The Contractor shall perform the Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, Volatile Organic Compounds and other substances damaging to health and the environment.

**47. FORCE MAJEURE**

47.1 For the purpose of this Condition 47, "Force Majeure" means any event or occurrence which is outside the control of the Party affected and which is not attributable to any act or failure to take preventative action by the Party concerned, but shall not include any industrial action occurring within the affected Party's organisation.

47.2 Neither party shall be liable to the other party by reason of any failure or delay in performing its obligations under this Contract which is due to Force Majeure.

47.3 If either Party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that party shall promptly give notice of those circumstances as soon as reasonably practicable after becoming aware of them and shall inform the other Party of the period for which it estimates that the failure or delay will continue.

**48. LAW AND JURISDICTION**

48.1 This Contract shall be governed by and interpreted in accordance with English law and the parties submit to the jurisdiction of the English courts.

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**SECTION 3**

**THE BUSINESS REQUIREMENT**

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## **1. GENERAL**

### **1.1 Purpose and overview**

- 1.1.1 This section 3 outlines the Authority's requirements for the Core Services. The Contractor shall provide the Core Services in accordance with the method statement set out at Appendix 2 to section3.
- 1.1.2 The "single operating methodology", will be managed by the Contractor. It will operate primarily from Heywood Remote Storage Site.
- 1.1.3 The Contractor's duties will include: receipt, putting away, safe storage, retrieval and preparation for despatch of Records to different parts of the UK in accordance with requests from DWP offices.
- 1.1.4 The transport of physical Records to and from the Premises is undertaken by the DWP contracted Courier and is not within the Scope of this Contract
- 1.1.5 At the end of the Contract Period all equipment transferred to the Contractor shall remain in the ownership of the Authority. The paper and data Records shall remain the property of the Authority at all times.
- 1.1.6 DWP Records will be migrated to the new arrangements during the Migration Period in accordance with the Migration Plan.

### **1.2 Material to be stored**

- 1.2.1 Items sent for storage will be:
  - (a) Files marked with all identifying details marked on the covers, or
  - (b) Boxes containing files or documents with identifying details marked on the boxes, or
  - (c) Items to be placed in or associated with a file or box already in store.
- 1.2.2 Files are generally categorised as either:
  - (a) Customer case-files holding information about private citizens.
  - (b) Policy, Administrative and Financial records, many of which will be subject to access restrictions.

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- 1.2.3 A small proportion of files and boxes may contain magnetic tape, CD or other electronic/optical data storage. One file type contains X-ray transparencies.
- 1.2.4 Infrequently, files may be physically “linked” i.e. two or more files tagged together. Tagged files will generally be managed as a single file.

## 2. SERVICE REQUIREMENT

### 2.1 Core functions

- 2.1.1 The “core functions” comprise the low-level actions, which will be carried out by the Contractor in response to requests made by individual file store Users.
- 2.1.2 Service Levels applicable to each function are set out in Appendix A to Section 4.

**Function 1: File Intake – of pre-registered files** A single file sent for storage not previously registered in store.

**Function 2: File Intake – file already registered** A single file sent for storage that has previously been held in store and is registered in store under these arrangements. (i.e. a file returned to the Contractor following an earlier retrieval).

**Function 3: Linking:** Individual documents sent to the store for “linking” with a parent file already held in store.  
The Contractor will place the document inside the file (or for some file types, attach the item to the file.)

**Function 4: File Retrieval** The operator will send a file out of the store either:

- (a) On legitimate request made through agreed interface mechanism, or
- (b) On a “review date” marked on the file or file control mechanism.

**Function 4(a): Document retrieval** See 2.2 below.

**Function 5(a): Information retrieval – Image** See 2.2 below.

**Function 5(b): Information retrieval – Text** See 2.2 below.

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**Function 6: Intake of boxed material** A single box is sent for storage. (See para 2.5.11.. regarding boxed “ranged” material)

**Function 7: Retrieval of box** Retrieval and dispatch of a box.

**Function 7a: Retrieval of a file contained in a box:** Retrieval of a specified item (normally a file) from a specified box to be dispatched to the requesting office or actioned in some other way.

**Function 8: Amendment of file-cover details** On request, the operator will alter details written on file covers, for example a destruction date.

**Function 9: Change to control data only** Some changes may be actioned by the Contractor changing data on the file management system and where no physical action is required on the file itself. One example is a change of owning office. In addition, some business units may decide that destruction dates, or Not for Destruction markings could be dealt with in this way.

**Function 10: Destruction of a file.** Files will be identified for destruction by request through the agreed interface mechanism, or, the file and/or file control mechanism will show a destruction date. Files due for destruction must be placed in secure containers as agreed, or, if not DWP premises, destroyed under agreed conditions.

**Function 10(a): Destruction of a single box** Destruction, identification and service level boxes are as Function 10 above.

## 2.2 Additional ad-hoc functions

2.2.1 The additional ad-hoc function will be carried out by the Contractor in response to requests made by individual file store Users and charged on a transactional basis. These do not form part of the “core functions”

**Function 4(a): Document retrieval** On request, a document or several documents held in a file are removed from a file and sent to the requesting office.

**Function 5(a): Information retrieval – Image** On request, the image of a specified document contained in a file is sent to the person requesting it. (A scanned image is preferred, but FAX is possible and in some circumstances may be specifically requested by the User).



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**Function 5(b): Information retrieval – Text** On written request, straightforward information is extracted from one or more documents held in a file and a message returned to the person requesting it. A single request will be limited to a 100 word response.

### 2.3 Measurement of activity volumes

2.3.1 For the purposes of measuring activity volumes the following shall be counted as a single transaction

**Function 1** – each file received

**Function 2** – each file received

**Function 3** – each item to be linked

**Function 4** – each file to be retrieved

**Function 4(a)** – each document to be retrieved

**Function 5(a)** – each image to be retrieved and scanned

**Function 5(b)** – each 100 words to be retrieved

**Function 6** – each Box received (assuming to be registered and filed at box level only)

**Function 7** – each box to be retrieved

**Function 7a** – each file to be retrieved

**Function 8** – each file in respect of which details are to be amended

**Function 9** – each item of control data to be amended

**Function 10** – each file to be made available for destruction

**Function 10a** – each box to be made available for destruction

### 2.4 Bulk operations.

2.4.1 There will be ad-hoc requests for bulk operations. For example but not limited to:

- (a) Bulk intake or export of records on reorganisation;
- (b) Bulk marking of files (or the file-store control mechanism) “not for destruction” on destruction embargo;
- (c) Bulk destruction of files on the lifting of a destruction embargo;
- (d) Bulk changes of ownership of files on internal reorganisation

These operations will be arranged through the Authority’s Contract Manager and service levels given in 2.1 may not apply but will be determined by the Authority on a case by case basis.

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## **2.5 Control Requirements**

- 2.5.1 Items sent for storage will be uniquely identified as described in the following paragraphs.
- 2.5.2 Customer case files are identified by customer name, National Insurance Number and benefit type. Some file types will require an additional alphanumeric identifier. Some benefit types require distinction between a “live” file and one or more “dormant” files relating to the same individual.
- 2.5.3 Identifying details will be included on individual file-covers. These may include various Departmental codes (for example, alpha-numeric office identifiers). File cover layouts differ between benefit-types and there may be some differences within benefit-types. Benefit types may not always be shown on file jackets but these will be shown, where necessary, on containers used to send files to store under Function 1.
- 2.5.4 Policy, Administrative and Financial records are identified by a unique file number
- 2.5.5 “Ranged” material sent for storage is covered at paragraph 2.5.11 below
- 2.5.6 Items sent for linking (function 3) will show the relevant file using the information shown above, or sufficient to identify the file uniquely, or by other method as agreed see paragraph 2.5.10 below.

### Other file markings:

- 2.5.7 File covers on files sent to store (Function 1) will be marked to show the owning office or registry. Files may also be marked to show:
- (a) A destruction date;
  - (b) A review date
  - (c) “NFD” (Not for destruction).
  - (d) “PV” (Potentially violent).
  - (e) Sensitive cases
- 2.5.8 These details are relevant to managing files in store. They may change when a file is returned to store after having been sent out. (function 2)
- 2.5.9 When a file is registered in store, the file cover may be marked (or bar coded etc) by the operator to facilitate future management. This must not obscure any of the information or markings written or printed on file covers.

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2.5.10 Procedures may be agreed with a future operator to use identifiers allocated by the operator, for the purposes of requesting functions at paragraph 2.1, providing these identifiers are on a database and easily visible to DWP staff.

“Ranged” files

2.5.11 Files expected to remain inactive until destruction may be sent for storage in boxes and be indexed and managed by the Contractor as a single box. Subject to arrangements with the Contractor, boxes will be marked, or will contain data-sheets, to show the contents and the common destruction date.

**2.6 Inventory and audit trail requirements**

2.6.1 The Contractor shall maintain a complete and accurate inventory (database) of items held in storage. As a minimum, the inventory must include, for each item:

- (a) All Identifying details (paragraph 2.5.2 to 2.5.4)
- (b) Owning office or registry (paragraph 2.5.7)
- (c) Any review, destruction date or amendment (paragraph 2.5.7)

2.6.2 The Contractor shall keep a complete and accurate record in the form of a secure audit trail of the action leading to the release of information or documents (Functions 4, 4(a), 5(a), 5(b) 7, 7(a)). A record shall be kept of:

- (a) DWP identifiers for file or item requested;
- (b) The date, time and source of the request;
- (c) The action carried out and the date completed.

2.6.3 The record shall be kept for 3 months, or longer if the transaction is the subject of dispute or enquiry. If the information has been sent to a registry or location that does not own the item, the record must be kept for 12 months.

2.6.4 A record shall be kept of all other items passed for destruction or destroyed which shows:

- (a) DWP identifiers for item passed for destruction or destroyed
- (b) Date passed for destruction or destroyed.

2.6.5 The record of items destroyed shall be kept for a period of 12 months after destruction and may take the form of a secure electronic record. Registered files

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are subject to Public Record Office rules. Disposal schedules must be maintained in a prescribed format, and may be kept indefinitely.

- 2.6.6 Where electronic system(s) are proposed to manage the files and/or interfaces with file-store users this requirement shall be expected to take the form of a secure electronic audit trail generated by the system(s).
- 2.6.7 This audit trail shall be routinely available to the DWP contract management team. It is desirable that audit trails are sufficiently detailed and robust to make it possible to establish whether or not information or documentation held in specified files has been supplied by the operator and if so, by whom, to whom and when. These audit trails should be kept for the duration of the contract and not destroyed without the written permission of the Authority.

## **2.7 Exceptions**

- 2.7.1 Where a request has been made by a DWP user for any core function but the request cannot be carried out within the times specified in the service level, or carried out at all, this shall be notified to the person or unit that made the request as well as the Authority's Representative or nominated Deputy.
- 2.7.2 Notifications under this requirement shall be issued within 1 hour of discovery.
- 2.7.3 The notification shall show the reason why action cannot be taken within the required time, and, if appropriate, indicate what other action will be taken or seek further instruction.
- 2.7.4 The Authority's Contract Manager may specify other circumstances that should be reported to the relevant file owner. For example:
- (a) Duplicate file found in store;
  - (b) File apparently lost in store;
  - (c) No trace of file having been received; and
  - (d) And any other discrepancies that may be apparent to the Contractor.

## **3. SECURITY**

- 3.1 Physical security is the responsibility of Land Securities Trillium and DWP Estates contract management. The Contractor shall comply with any restrictions or requirements arising from either parties' policies.

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3.2 The Contractor shall maintain and demonstrate an adequate security policy which specifically addresses the protection of personal and other restricted information held in DWP records in store, and the risks of:

- (a) Information being disclosed by the Contractor's staff inadvertently in response to a bogus request for documents or information from outside DWP
- (b) Deliberate unauthorised access to and/or disclosure of information by the operator's staff

3.3 The policy shall address:

- (a) Security management (risk assessment, response, evaluation, responsibilities)
- (b) Staff integrity (recruitment, training and disciplinary procedures); and
- (c) Management of suspected breaches of security.

3.4 All suspected security breaches shall be reported to the Authority's Representative immediately

3.5 The Contractor shall have mechanisms in place to ensure that files, documents or information passed from the store are only passed to the office that owns the file (or the file containing the information).

#### **4. NOT USED**

#### **5. HOURS OF AVAILABILITY**

5.1 The minimum requirement is to have Staff available on site to receive requests and calls between 07:00 to 21:00 on all normal Working Days Monday to Friday.

#### **6. IMPLEMENTATION**

6.1 Material for storage will transfer to the operator's control as follows:

- (a) Material in Heywood Store at contract go-live:
- (b) Material in storage elsewhere in DWP: during a migration period running from July 2004 to November 2006.

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- (c) New files or files in active use: Once the file holdings for a DWP location or business area have been migrated under (b) above, that location or area will use the new central storage arrangements

6.2 Files and boxes must be brought within the services and service levels set out in this document as follows:

- (a) Material in Heywood Store at contract go-live: Para 6.1 (a) above As early as possible during the migration period.
- (b) Material imported during the migration period under bulk transfer arrangements Para 6.1 (b) above Within 2.5 days of delivery to Heywood or other site as agreed.
- (c) Material imported as normal intake Para 6.1 (c) above: Within 24 hours of delivery to Heywood or other site as agreed.

**7. Differences in the core requirements affecting material imported during the migration**

**Ranged material**

- 7.1. This applies to some dormant files held in store at 30 June 2004 and to dormant files sent to central storage in ranged boxes during the migration period. Files will be submitted (or will already have been stored) in boxes marked to show the contents, which will always be of the same file-type and have the same office of origin. These boxes of dormant files will be marked with destruction dates.
- 7.2. These files shall continue to be managed by the Contractor at box level until destruction on the dates shown. (i.e. Individual files in the boxes need not be indexed.) However there will continue to be some relatively low level of continuing activity.
- 7.3. In respect of ranged dormant material the following should apply:
  - 7.3.1. **Function 3: Linking** The need to link items with dormant files will be less frequent than with live files. Material sent for linking will show the box identifier. The operator should place items for linking in the relevant file and return it to the original box.
  - 7.3.2. **Function 4: Retrieval:** When individual files are requested, the requesting office shall specify the box by reference number and file

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identifying details. The operator shall remove the file from the box and arrange for collection in the normal way. When the file is returned, it shall be individually indexed as described in Function 4 and not returned to the original box.

- 7.3.3. **Function 5: Information retrieval.** Cases will be referenced as described in the previous sub-paragraph. When the information requested has been provided, the file shall be returned to the same box.
- 7.3.4. **Functions 8, 9 and 10.** Where changes of owning office or destruction instructions arise, functions will apply to whole boxes.

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## **Appendix 1**

### **Relevant Legislative Requirements**

#### **a) The Data Protection Act 1998 (DPA)**

- 1) This legislation draws UK law into line with the EC Directive *95/46/EC* on Data Protection and is applicable to electronic and clerical records. Allowing an individual the right to see and/or receive a copy of personal data held about them, and to have any incorrect data amended or deleted.
- 2) The Provider will be required to comply with the relevant obligations under this legislation and will accordingly assume relevant responsibility for any breach occurring whilst data is under their care, (*section 55, DPA 1998*).
- 3) *Section 7*, provides that an individual is entitled to be informed by a data controller, whether he is the subject of any data being processed by a controller and may request a copy of such data.
- 4) S/he may also be informed where data is obtained from and of the logic involved in decisions that are automated.
- 5) Information is to be provided to the individual promptly, as a minimum, within 40 days of receiving the request, subject to exceptions under *section 29(1)*.

#### **b) Public Records Act 1958 & 1967 (Public Records Act (NI) 1923). Also Local Government (Records) Act 1962, the Local Government Act 1972, Local Government (Access to Information) Act 1985**

- 1) Legislation creates duties for public record bodies in respect of records they create and guidance on the management and transfer of records, these duties are to be supervised by the Keeper of Public Records. The term 'public records' includes Welsh public records, *section 116-118, Government of Wales Act 1998*.
- 2) The National Archive is an Executive Agency of the Department of Constitutional Affairs. The National Archive's responsibilities include:
  - Developing cross-government policies, procedures and standards for records, including electronic records.
  - Giving advice on records issues and monitoring standards in Government.
  - Selecting records of historical interest for the National Archive and providing access to them.



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- 3) As well as meeting legal requirements, records must be kept for internal reference purposes and to provide the basis for public and internal accountability: Showing what has been done, how done and why.
- 4) Well organised and controlled filing systems are essential if documents are to be found easily, and to ensure that sequences of documents can be used to reconstruct a complete picture of how work was taken forward.
- 5) A mandatory registered filing system is in use across Government to meet these needs.
- 6) The Provider shall assist in the compliance with all obligations created under this legislation.

**c) Freedom of Information (FoI) Act 2000**

- 1) The 'Code of Practice on the Management of Records' under *section 45* of the *Freedom of Information Act 2000* applies for the purposes of this requirement.
- 2) The arrangement for archiving and retrieval or destruction must be adequate to effect the rights created under the FoI Act. A tracking system should allow the easy retrieval of information relating to records at any time.
- 3) The express provisions of this Act also include a requirement for the operation of a contingency or business recovery plan, in place to provide protection for records vital to the continued functioning of the Authority.
- 4) It is particularly important under FoI that the disposal of records, here defined as the point in their lifecycle when they are either transferred to an archive store or are physically destroyed, is undertaken in accordance with clearly established policies. Formally adopted by authorities and enforced by properly authorised staff.
- 5) The storage of closed records awaiting disposal should follow accepted standards relating to environment, security and physical organisation.
- 6) Features of the Act:
  - *a general right of access to recorded information held by a wide range of bodies across the public sector, subject to certain conditions and exemptions. The right includes provisions in respect of historical records, which are more than 30 years old.*

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- *In relation to most exempt information, the information must nonetheless still be disclosed where the public interest in disclosure outweighs the public interest in maintaining the exemption in question.*
- *A duty on every public authority to adopt and maintain a scheme which relates to the publication of information by the authority and is approved by the Information Commissioner. Authorities must publish information in accordance with their publication schemes.*
- *Effective electronic records keeping is also covered by this Act.*

The Provider shall comply with all obligations created under this legislation.

**d) Social Security (Administration) Act 1992** (under ss.123 and 115).

- 1) Under this Act it is an offence for anyone who is or has been employed in Social Security administration to disclose personal information acquired in the course of their employment without lawful authority if:
  - *it is made by a civil servant in the course of official duty;*
  - *it is made by a Contractor who is providing services to the DWP in accordance with instructions given by DWP*
  - *it is required by law or a court order; or*
  - *it is made with the consent of the customer*

The Provider shall comply with all obligations created under this legislation.

**e) Social Security (Administration) Act 1992**

- 1) *Section 115* allows proceedings to be taken against corporate bodies or their directors and officers where:
  - *an offence has been committed under the Act, and,*
  - *it occurred with the consent or connivance of the directors or officers of the corporate body, or because of their neglect.*
- 2) One effect of this Section is that where an unauthorised disclosure has been made by the Contractor's staff, proceedings may be taken against the Contractor or its directors or officers if it can be shown the Contractor's negligence contributed to the disclosure.

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The Provider shall comply with all obligations created under this legislation.

**f) Computer Misuse Act 1990**

- 1) *Section 1(1)* makes it a criminal offence for any person to cause a computer to perform a function with intent to secure access to any program or data held in any computer where:
  - *the access the person intends to secure is unauthorised, and*
  - *the person knows at the time when he or she causes the computer to perform the function that is the case.*
- 2) This Act was created with the aim of protecting information stored on computers from unauthorised access or modification.

The Provider shall comply with all obligations created under this legislation.

**g) Companies Securities (Insider Dealings) Act 1985**

Staff must not use commercially sensitive information for financial gain, or encourage others to do so, if they know, or ought to know, that it is unpublished. For example, staff must not disclose information regarding bids for a tendering exercise to another contractor who may wish to bid for the work.

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**APPENDIX 2**

**CORE SERVICES METHOD STATEMENT**

Within this Appendix the following words have the meanings given below:

“DWP Office” means a location of the Authority recognised as such on MOPS.

“DWP User” means a representative of the Authority authorised by the Authority to use FARIO and to carry out associated business processes

“DWP Intranet” means the networked information system available to DWP Offices

“MOPS” means the warehouse system to be used by the Contractor at Heywood

“FARIO” means the web enabled DWP Office access to “MOPS”

“NAPS” means non-associated post.

**1. Core Functions**

In providing the Core Services at Heywood, the Contractor shall carry out the core functions described in the sections below in response to requests by DWP Users.

The Authority shall be responsible for the authorising signatories on the completed form templates where appropriate.

The Contractor shall take these authorising signatories at face value and in good faith.

The Contractor shall provide required inventory form templates in Microsoft Office to the Authority for non-FARIO enabled sites. The Authority shall make these form templates available on the DWP Intranet.

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#### **Function 1: File Intake and Registration**

The Contractor shall receive, register and index (at the file level) single files that have not been previously registered [by the Contractor].

#### **FARIO enabled sites**

The DWP User shall enter the file and box details into the FARIO system.

The Authority shall use all reasonable endeavours to ensure that information input is accurate.

The DWP User shall affix a File barcode label to each file and a Box barcode label to each box.

The Authority shall be responsible for transporting files and boxes to Heywood using its chosen courier.

The Contractor shall receive all files physically into the Heywood site from the Authorities chosen courier.

The Contractor will verify all physical files against the data entered onto FARIO by the DWP User.

If the Contractor identifies any discrepancies in what has been recorded in MOPS, the information on the file, or in the inventory, the Contractor will investigate and either correct the record in MOPS, or raise a query with the DWP User who sent the files in.

The Contractor shall ensure that all files will be available for linking and retrieval within 24 hours of receipt in Heywood.

#### **Non-FARIO sites**

The DWP User shall complete an inventory form template of all files being despatched to Heywood in the box. For each file this form will list the file identifiers and related control data. This form will also include the box identifier as indicated on the box barcode label.

The Authority shall email the inventory form to the designated DWP email address at Heywood as described in the Clerical User Guide.

The Authority shall be responsible for setting up and maintaining a dedicated DWP email address on a DWP PC at Heywood.

The DWP User at Heywood shall download all emails to CD and provide the CD to the Contractor daily.

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The Authority shall be responsible for supplying CDs for this purpose.  
The Authority shall be responsible for transporting the archive box of files via its courier to Heywood.

The Contractor shall receive all files physically into the Heywood site from the Authorities chosen courier.

The Contractor will enter the data provided via email onto MOPS via electronic transfer.

The Contractor will verify all physical files against the data entered onto MOPS.

If the Contractor identifies any discrepancies in what has been recorded in MOPS, the information on the file, or in the inventory, the Contractor will investigate and either correct the record in MOPS, or raise a query with the DWP User who sent the files in.

The Contractor shall ensure that all files will be available for linking and retrieval within 24 hours of receipt in Heywood.

#### **Function 2: File Returns – File Already Registered**

The Contractor shall receive returned files that have been sent out from the Heywood warehouse. The files will already have a barcode and an identity in the warehousing system [MOPS]

#### **FARIO enabled sites**

The DWP User shall enter all file and box details into FARIO.

The Authority shall be responsible for transporting returned files to Heywood using its chosen courier.

The Contractor shall receive all files physically into the Heywood site from the Authorities chosen courier.

The Contractor will verify all physical files against the data entered onto FARIO and MOPS by the DWP User.

If the Contractor identifies any discrepancies in what has been recorded in MOPS, the information on the file, or in the inventory, the Contractor will investigate and either correct the record in MOPS, or raise a query with the DWP User who sent the files in.

The Contractor shall ensure that all files will be available for linking and retrieval within 24 hours of receipt in Heywood.

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#### **Non-FARIO sites**

The DWP User shall complete an inventory form for each file(s) to be returned and place the form in the polylope with the files. All files shall be placed in Polylopes to enable the Contractor to distinguish between New and Returned files.

All Polylopes will be provided by the Authorities chosen courier.

The Contractor shall receive all returned files physically into the Heywood site from the Authorities chosen courier.

The Contractor will enter the data provided from the template completed by the DWP User onto MOPS.

The Contractor will verify all physical files against the data entered onto MOPS.

The Contractor will locate all returned files within the warehouse under the service levels agreed.

If the Contractor identifies any discrepancies in what has been recorded in MOPS, the information on the file, or in the inventory, the Contractor will investigate and either correct the record in MOPS, or raise a query with the DWP User who sent the files in.

The Contractor shall ensure that all files will be available for linking and retrieval within 24 hours of receipt in Heywood.

#### **Function 3: Linking**

The DWP User shall link individual documents [NAPs] to files that have already been registered in the warehouse on FARIO before despatch to Heywood

The Contractor shall link individual documents [NAPs] to files that have already been registered in the warehouse on receipt if received from a non FARIO DWP site.

#### **FARIO enabled sites**

The DWP User shall link the document to the parent file in FARIO.

The DWP User shall attach a barcode label to each individual document and despatch to Heywood as Function 1.

The Contractor shall process all linked documents as per Function 1.

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If the Contractor identifies any discrepancies in what has been recorded in MOPS, the information on the file, or in the inventory, the Contractor will investigate and either correct the record in MOPS, or raise a query with the DWP User who sent the files in.

The Contractor shall ensure that all files will be available for linking and retrieval within 24 hours of receipt in Heywood.

#### **Non-FARIO sites**

The DWP User shall complete an inventory form template of all linked documents being despatched to Heywood in the box. For each linked document this form will list the file identifiers and related control data and specify the document as a NAP. This form will also include the box identifier as indicated on the box barcode label.

The DWP User will despatch the linked documents to Heywood as per Function 1.

The Contractor shall process all linked documents as per function 1 with one additional process step which identifies the document as linked to a parent file.

If the Contractor identifies any discrepancies in what has been recorded in MOPS, the information on the file, or in the inventory, the Contractor will investigate and either correct the record in MOPS, or raise a query with the DWP User who sent the files in.

The Contractor shall ensure that all files will be available for linking and retrieval within 24 hours of receipt in Heywood.

#### **Function 4: File Retrieval**

The Contractor shall retrieve registered files file from the warehouse at the request of a DWP User.

The Contractor shall retrieve registered files file from the warehouse if the electronically held file control data indicates a periodic review is due.

#### **FARIO enabled sites**

The DWP User shall log into the FARIO system from their desktop and shall enter the file identifiers and control data for each file required.

The Contractor shall locate the required files and despatch to the requesting DWP Office.



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**Non-FARIO sites**

The DWP User shall complete the Microsoft Office template supplied by the Contractor

The DWP User shall fax the completed form template to the Contractor.  
The Contractor shall locate the required files and despatch to the requesting DWP Office.

The Contractor shall ensure that requests received before 17:00 shall be despatched the next working day. Requests received after this time shall be despatched on the second working day following the request.

**Function 4.1: Missing Document/ File / Box – Escalation**

The Contractor shall establish procedures to deal with registered documents, files, and boxes which, on the first attempt to find them, have been indicated as missing

**Function 4(a): Document Retrieval**

Details of ad hoc functions for Document Retrieval are provided in section 3.2.4.

**Function 5(a): Information Retrieval – Image**

Details of ad hoc functions for Information Retrieval – Image are provided in section 3.2.4.

**Function 5(b): Information Retrieval – Text**

Details of ad hoc functions for Information Retrieval – Text are provided in section 3.2.4.

**Function 6: Intake of Boxed Material**

The Contractor shall receive boxes that have not been previously registered [by the Contractor].

**FARIO enabled sites**

The DWP User shall key in the box barcode, the identification and control data for the box into FARIO.

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The Authority shall be responsible for transporting files and boxes to Heywood using its chosen courier.

The Contractor shall receive all boxes physically into the Heywood site from the Authorities chosen courier.

The Contractor will verify all physical boxes against the data entered onto FARIO by the DWP User.

If the Contractor identifies any discrepancies in what has been recorded in MOPS, the information on the file, or in the inventory, the Contractor will investigate and either correct the record in MOPS, or raise a query with the DWP User who sent the box in.

The Contractor shall ensure that all boxes will be available for linking and retrieval within 24 hours of receipt in Heywood.

#### **Non-FARIO sites**

The DWP User shall complete a form template detailing the identification and control data for each box and fax this form to the Contractor. The DWP User shall place a copy of the form in the box and affix a barcode label to the box.

The Authority shall be responsible for transporting files and boxes to Heywood using its chosen courier

The Contractor shall receive all boxes physically into the Heywood site from the Authorities chosen courier.

The Contractor will enter the data provided via fax onto MOPS.

The Contractor will verify all physical boxes against the data entered onto MOPS. If the Contractor identifies any discrepancies in what has been recorded in MOPS, the information on the file, or in the inventory, the Contractor will investigate and either correct the record in MOPS, or raise a query with the DWP User who sent the box in.

The Contractor shall ensure that all boxes will be available for retrieval within 24 hours of receipt in Heywood.

#### **Function 7: Retrieval of Box**

The Contractor shall retrieve registered boxes from the warehouse at the request of a DWP User.

This function relates to the retrieval of a ranged box containing files or documents that has been indexed at box level.

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The Contractor will retrieve the box as per Function 4.

**Function 7(a): Retrieval of a File Contained in a Box**

The Contractor shall retrieve a file from inside a ranged box at the request of a DWP User.

In order to request a file from a ranged box, the DWP user must identify the box in which the file is found, and then give sufficient information for the exact file inside it to be found.

**FARIO enabled sites**

The DWP User shall enter the box details into FARIO and provide sufficient information to enable the file to be identified within the box.

The Contractor will retrieve the box as per Function 4.

**Non-FARIO sites**

The DWP User shall enter the box details into a form template and provide sufficient information to enable the file to be identified within the box.

The DWP User shall fax the form template to the Contractor.

The Contractor will retrieve the box as per Function 4.

**Function 8: Amendment of File Cover Details**

**FARIO enabled sites**

The DWP User will amend the file control details on FARIO.

The Contractor will NOT amend the physical details on the file.

The DWP User will amend the physical details on next retrieving the file.

**Non-FARIO Sites**

This function relates to the change of details in the information written on the covers of registered files.

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The DWP User shall employ one of two methods:

#### **Method 1**

The DWP User shall request the file (see Function 4).

On receipt of the requested file, the DWP User shall:

- make the required amendments to the file cover
- complete a form template detailing the amendments made
- attach the amendment form to the top of the file
- return the file to the Contractor (see Function 2)

#### **Method 2**

The DWP User shall complete a form template indicating the required amendments to the file cover.

The DWP User shall supply sufficient information to enable the Contractor to identify the file.

The DWP User shall fax the completed form to the Contractor.

The Contractor shall retrieve the file (see Function 4) and make the requested amendments to the MOPS system.

The Contractor will not make physical amendments to the file. The form detailing the changes will be inserted in the file to enable the DWP User to make the amendments when the file is next requested.

#### **Function 9: Change to Control Data**

In the event that file amendments requested by the DWP User (see Function 8) shall impact on the control data of the file held on MOPS, the Contractor shall amend these details on MOPS.

The Contractor shall amend the data as requested within 24 hours of receipt of an authorised request.

#### **Function 10: Destruction of a File**

The Contractor shall carry out visual checks of files not registered on the MOPS system. The Contractor shall compile a list of these files with a due Destruction Date or due Review Date and shall supply this list to the Authority.

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The Contractor shall also run batch reports on MOPS to identify those files with a due Destruction Date or due Review Date. The Contractor shall supply this list to the Authority.

The Authority shall supply confirmation to the Contractor that the listed files can be destroyed.

The Contractor shall then arrange the destruction of the files within two week's of confirmation being received without further discourse with the Authority.

**Function 10(a): Destruction of a Single Box**

This function follows the same procedure as Function 10.

Although ranged boxes contain un-registered files, these files could be separately requested (see function 7a). If a file is requested by a DWP User the Contractor shall register the file on MOPS.

It is the responsibility of the Authority to communicate to the Contractor any new destruction dates allocated to these files which may now override the destruction date allocated to the box.

The Contractor shall then arrange the destruction of the box within two week's of confirmation being received without further discourse with the Authority.

## **2. Box and Barcode Label Ordering**

### **Box Ordering**

The Contractor shall provide an initial supply of flat pack boxes to DWP offices by 5th July 2004.

In response to a DWP User request the Contractor shall provide archive boxes to the DWP office, subject to the volume limits specified within the User Guidance.

.It is the responsibility of the Authority to ensure that sufficient supplies of boxes are maintained at each DWP office to meet demand.

### **FARIO enabled sites**

The DWP User shall enter the box volumes and details into FARIO.

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**Non-FARIO sites**

The DWP User shall complete a form template with the box volumes required and fax the completed form to the Contractor

The Contractor shall despatch the required number and types of boxes to the requesting DWP office.

The Contractor shall endeavour to despatch requests received before 17:00 the next working day. Requests received after this time shall be despatched on the second working day following the request.

**Supply of Archive Indexing Labels**

The Contractor shall provide an initial stock of box and file barcode labels to DWP offices by 1st July 2004. In response to a DWP User request the Contractor shall provide barcode labels to the DWP office, subject to the volume limits specified within the User Guidance.

The Contractor shall maintain a store of barcode labels at Heywood.

The Contractor shall endeavour to despatch requests received before 17:00 the next working day. Requests received after this time shall be despatched on the second working day following the request.

**3. Additional Ad-hoc Functions**

These functions do not form part of the core business that shall be carried out by the Contractor.

The Contractor shall charge the Authority for these functions at transaction level.

The Contractor shall maintain detailed records of the work carried out and provide reports to the Authority for charging purposes.

**Function 4(a): Document Retrieval**

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#### **FARIO enabled sites**

The DWP User shall identify the file in which the document(s) is found and enter the details into FARIO together with sufficient detail to enable the Contractor to identify the required document(s).

The Contractor shall locate the file (see Function 4), remove the required document(s) and forward to the DWP office.

#### **Non-FARIO sites**

The DWP User shall complete a form template with the details of the file in which the document(s) is found together with sufficient detail to enable the Contractor to identify the required document(s).

The DWP User shall fax the completed form template to the Contractor.  
On receipt of the form, the Contractor shall locate the file (see Function 4), remove the required document(s) and forward to the DWP office.

If the file cannot be located, the Contractor shall contact the requesting DWP office for further information.

If the Contractor receives a request for a document in a registered file before 17:00, the Contractor shall retrieve the document and make it ready for collection by the courier that day. Requests received by the Contractor after 17:00 shall be ready for collection the next working day.

#### **Function 5(a): Information Retrieval – Image**

##### **FARIO enabled sites**

The DWP User shall enter into FARIO sufficient detail to enable the Contractor to identify the required document.

The Contractor shall trace the document as described in Function 4(a), scan the required document and send by fax to the requesting DWP Office.

##### **Non-FARIO sites**

The DWP User shall complete a form template including sufficient detail to enable the Contractor to identify the required document.

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The DWP User shall fax the completed form to the Contractor.

On receipt of the fax, the Contractor shall trace the document as described in Function 4(a), scan the required document and send by fax to the requesting DWP Office.

The Contractor shall treat requests for information of this nature as urgent and shall retrieve and despatch the information to the DWP office within 2 hours of receipt.

**Function 5(b): Information Retrieval – Text**

**FARIO enabled sites**

The DWP User shall enter into FARIO sufficient detail to enable the Contractor to identify the required document(s).

The Contractor shall trace the document as described in Function 4(a), scan the required document(s), to a maximum of 100 words, and send by fax to the requesting DWP Office.

The Contractor shall treat requests for information of this nature as urgent and shall retrieve and despatch the information to the DWP office within 2 hours of receipt.



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**Non-FARIO sites**

The DWP User shall complete a form template including sufficient detail to enable the Contractor to identify the required text.

The DWP User shall fax the completed form to the Contractor.

On receipt of the fax, the Contractor shall trace the document as described in Function 4(a), scan the required document, to a maximum of 100 words, and send by fax to the requesting DWP Office.

The Contractor shall treat requests for information of this nature as urgent and shall retrieve and despatch the information to the DWP office within 2 hours of receipt.

**4. Bulk Operations**

As well as the normal day-to-day tasks, on occasion the Contractor may receive requests from the Authority to undertake a major, bulk operation.

Bulk operations may include:

- Bulk intake or export of records on reorganisation
- Bulk marking of files
- Bulk destruction of files
- Bulk changes of ownership

The Contractor understands that given the nature and scale of these actions, the service levels to which they operate the rest of the contract may not apply. Service levels for these operations will be agreed between the Authority and the Contractor on a case by case basis.

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**APPENDIX 3**

**SERVICES DESCRIPTION AND SERVICE LEVELS FOR NELSON  
SERVICE, WILLAND SERVICE AND DCS HEYWOOD SERVICE**

This Appendix 3 shall be agreed by the Parties following the Commencement Date.

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**DOCUMENT 4**

**SCHEDULE OF PRICING AND RATES - Redacted as  
per Section 43 of the Freedom Of information Act (FOI)  
2000**

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**SECTION 5**

**ADMINISTRATION INSTRUCTIONS - Redacted as per  
Section 41 of the Freedom Of information Act (FOI) 2000)**

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### **APPENDIX A**

#### **CONFIDENTIALITY UNDERTAKING [See Section 2 Condition 25.3]**

##### **DWP Record Storage Contract** **Between Capita Group and Contractor Employees**

In connection with a contract between Capita Business Services Ltd and the Authority for the provision of Record Storage services. To be signed by Capita and Service Partner Staff employed in providing the services before being given access to Government information.

I am employed by ..... I have been informed that I may be required to work for my employer in providing services to the Authority.

I understand that the information in the possession of the Authority or obtained from the Authority must be treated as confidential.

I hereby give a formal undertaking, as a solemn promise to my employer and to the Authority that:

1. I will not knowingly communicate any of that information, or any other knowledge I acquire about the Authority in the course of my work to anyone who is not authorised to receive it in connection with that work.
2. I agree not to photograph or film any part of the properties which I have access to in the course of performing the services unless I have written authority to do so from Capita Business Services Ltd.
3. I agree to hold all documents and technical or commercial information I receive in the course of performing the services in the strictest confidence and shall not publish or otherwise disclose the same unless I have written consent to do so from Capita Business Services Ltd.
4. I will not make use of any information or knowledge for any purpose apart from as required to do so in the course of my work.

I also acknowledge that this applies to all information that is not already a matter of public knowledge and that it applies to both written and oral information.

I also acknowledge that this undertaking will continue to apply at all times in the future, even when the work has finished and when I have left my employment.

I have also been informed that I will be bound by the provisions of Section 182 of the Finance Act 1989, the Official Secrets Acts 1911 to 1989, and the Social Security Administration Act 1992, section 123. I am aware that under those provisions it is a criminal

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offence to disclose information that has been given to the Department for official purposes. I am aware that serious consequences may follow any breach of those provisions.

Signed: .....

Surname .....

Forename .....

Contractor's name .....

Contract Ref No .....

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**APPENDIX B**

**CONTRACTOR'S KEY STAFF (redacted as per section 41 of the Freedom of  
Information Act (FOI) 2000)**

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**APPENDIX C**

**Contractor's ANTICIPATED RESOURCE STRUCTURE - redacted as per section 41  
of the Freedom of Information Act (FOI) 2000**

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**APPENDIX D**  
**VARIATION TO CONTRACT FORM**

CONTRACT REF:

VARIATION No:

( hereinafter called “ the Contractor ” )

**The Parties Agree to the following Variation toContract :**

Description of Variation.
Commencement date, .
By “ the Contractor “ :
Effect on the Contract :
Effect on the Contract Price:
Period of Variation :
Any special instructions :

**Words and expressions** in this Variation shall have the same meaning as are respectively assigned to them in the Contract.

**The Conditions of Contract** and any previous Variations shall remain effective and unaltered except as amended by this Variation.

**In Witness Whereof**, the Parties have executed this Variation in duplicate:

Signed for “The Contractor”

Signed for “The Authority “

By: .....

By:.....

Full Name:

Full Name :

Title: Senior Contract Manager

Title: Authority’s Representative

Date.....

Date.....

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#### APPENDIX E

#### LIST OF CONTRACTOR'S EQUIPMENT

The Contractor shall maintain a register of the Equipment consistent with the table set out in this Appendix.

Description	Quantity	Cost or value at commencement date (£)	Residual Book Value (£) at end of:
-------------	----------	--	------------------------------------

			Year	Year	Year

**\*A** replaced every 2 years

**\*B** replaced every year

**\*C** replaced every 5 years

**\*D** replaced every 5 years

**\*E** stationery purchased on an ongoing basis

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**APPENDIX F**

**TRANSFERRING EMPLOYEES - redacted as per section 41 of the Freedom of Information Act (FOI) 2000**

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**Annex 1**  
**Transferring Employees (Heywood, Iron Mountain)**

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**Annex 2**  
**Transferring Employees (DCS Heywood)**

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**Annex 3**  
**Transferring Employees (Nelson)**

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**Annex 4**  
**Transferring Employees (Willand)**

					<b>Transferring Employee List – Willand</b>								
<b>FILESTORE</b>	<b>Name</b>	<b>Redeploy</b>	<b>Staff No</b>	<b>Grade</b>	<b>Higher</b>	<b>Gender</b>	<b>Date of</b>	<b>Type of</b>	<b>Reckonable</b>	<b>Number of</b>	<b>Gross</b>	<b>ERNICS</b>	<b>Comments</b>
					<b>Duties?</b>	<b>M/F</b>	<b>Birth</b>	<b>contract</b>	<b>Service</b> <b>Date</b>	<b>hours</b> <b>worked</b>	<b>Salary</b>		
<b>Willand</b>													

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**Annex 5**  
**Transferring Employees (DWP Filestore Sites)**

					Transferring Employee List – <i>[insert ite]</i>								
<b>FILESTORE</b>	<b>Name</b>	<b>Redeploy</b>	<b>Staff No</b>	<b>Grade</b>	<b>Higher</b>	<b>Gender</b>	<b>Date of</b>	<b>Type of</b>	<b>Reckonable</b>	<b>Number of</b>	<b>Gross</b>	<b>ERNICS</b>	<b>Comments</b>
					<b>Duties?</b>	<b>M/F</b>	<b>Birth</b>	<b>contract</b>	<b>Service</b>	<b>hours</b>	<b>Salary</b>		
<b>Date</b>									<b>Date</b>	<b>worked</b>			
[Site]													



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**APPENDIX G**

**PENSION TRANSITION ARRANGEMENTS**

**1 Interpretation**

1.1 In this Appendix G, the following expressions have the following meanings

**Actuarial Assumptions** means the actuarial methods and assumptions to be used in calculating the Past Service Liabilities and the Transfer Amount as set out in the Actuary's Letter.

**Actuary** means a person who is a Fellow of the Institute of Actuaries or the Faculty of Actuaries in Scotland.

**Actuary's Letter** means a letter from PCSPS's Actuary to Capita's Actuary countersigned by Capita's Actuary relating to this Appendix G, such letter to be agreed by the parties (and attached as the appendix to this Appendix G) as soon as practicable following the date of this agreement, and which sets out the Actuarial Assumptions.

**Adjusted Transfer Amount** means the Transfer Amount adjusted as set out in the Actuary's Letter for the period from the Relevant Transfer Date to the Relevant Payment Date.

**Adjusted Re-transfer Amount** means the Re-transfer Amount adjusted for the period from the expiry of the Term to the Subsequent Payment Date in the same way as is set out in the Actuary's Letter in respect of the Transfer Amount.

**Capita's Actuary** means Mr David Field of Mercer HR Consulting, Telford House, 14 Tothill Street, London SW1H 9NB or any other Actuary appointed by Capita for this purpose.

**Capita's Actuary's Report** means a report to be prepared by Capita's Actuary in accordance with paragraph 4 in which he shall specify the sum he calculates to represent the Re-transfer Amount including a schedule showing how much of the Re-transfer Amount is attributable to each Subsequent Pensionable Employee's Re-transfer Past Service Liabilities.

**Capita Final Salary Scheme** means the Contractor's Pension and Life Assurance Scheme which is established and wholly administered in the UK and which is exempt approved under Chapter 1 of Part XIV of the Taxes Act;

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**Capita Money Purchase Scheme** means the Contractor's Group Money Purchase Scheme which is established and wholly administered in the UK and which is exempt approved under Chapter 1 of Part XIV of the Taxes Act;

**Classic PCS Pension Scheme** means the Classic Tier of the PCSPS

**Classic Plus PCS Pension Scheme** means the Classic Plus Tier of the PCSPS

**Classic PCSPS Section of the Capita Final Salary Scheme** means the benefits as set out under the Government Actuary's Broad Comparability Certificate Annex - Component C1

**Existing Contractors Scheme** means the Iron Mountain Norwich Union Pension Scheme;

**Incoming Contractor** means each person (including, if appropriate, the Authority) who immediately after the expiry of the Term will carry out any of the tasks which prior to the expiry of the Term formed part of the Services.

**Incoming Contractor's Actuary** means an Actuary (including, if appropriate, the Authority's Actuary) appointed for this purpose by the Incoming Contractor.

**Incoming Contractor's Scheme** means a retirement benefits scheme established or nominated for this purpose by an Incoming Contractor which is established and wholly administered in the UK, which is exempt approved under Chapter I of Part XIV of the Taxes Act (including, if appropriate, the PCSPS)) and to which Capita Final Salary Scheme can make a transfer payment without prejudicing tax approval of Capita Final Salary Scheme as an exempt approved scheme under the Taxes Act.

**Partnership PCS Pension Scheme** means the PCSPS Partnership Stakeholder Scheme

**Past Service Liabilities** means the actuarial value at the Relevant Transfer Date (calculated in accordance with the Actuarial Assumptions) of the aggregate of the benefits prospectively and contingently payable which have accrued in the PCSPS Scheme to or in respect of each Transferring Member (including any benefits granted in respect of him relating to a transfer payment received by PCSPS's Scheme from another pension scheme) in respect of pensionable service in PCSPS's Scheme before the Relevant Transfer Date allowing for future salary escalation in accordance with the provision in the Actuary's Letter.

**Relevant Payment Date** means the date which is 10 Business Days after the latest of:

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- (a) the day the Authority receives copies of the transfer consent forms referred to in the definition of “Transferring Members” below;
- (b) the day the Transfer Amount is determined and agreed in accordance with one of paragraphs 3.4 and 6;
- (c) the day agreement is reached on the benefits to be provided under paragraph 2.3 between Capita’s Actuary and PCSPS’s Actuary;
- (d) Inland Revenue approval of the payment of the Adjusted Transfer Amount as a bulk transfer payment as described in paragraph 3.6.

**PCSPS** means the Principal Civil Service Pension Scheme;

**PCSPS’s Actuary** means Mr Tim Boden of Hewitt, Bacon & Woodrow of Ashley Road, Epsom KT18 5BS or any other Actuary appointed by PCSPS for this purpose.

**PCSPS’s Actuary’s Report** means a report to be prepared by PCSPS’s Actuary in accordance with paragraph 3 in which he shall specify the sum he calculates to represent the Transfer Amount including a schedule showing how much of the Transfer Amount is attributable to each Pensionable Employee’s Past Service Liabilities.

**Premium PCS Pension Scheme** means the Premium Tier of the PCSPS

**Premium PCSPS Section of the Capita Final Salary Scheme** means the benefits as set out under the Government Actuary's Broad Comparability Certificate Annex - Component C2

**Pensionable Salary** means pensionable salary as defined in the relevant Contractor’s pension scheme trust deed and rules;

**Relevant PCSPS Employees** means the Transferring Employees who are active members of the PCSPS immediately before the [Relevant Transfer Date] and who are identified as such in ;

**Relevant Existing Contractors Employees** means the Transferring Employees who are active members of the Existing Contractors Scheme immediately before Completion the [Relevant Transfer Date] and who are identified as such;

**Relevant Transfer Date** means the date on which the employment of a Transferring Employee transfers to the Contractor as described in section 15.2

**Re-transfer Amount** such amount as shall be determined by Capita’s Actuary and agreed by the Incoming Contractor’s Actuary in accordance with

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paragraph 4 (or otherwise determined in accordance with paragraph 6) being the aggregate of the Re-transferring Past Service Liabilities as at the Relevant Transfer Date.

**Re-transfer Past Service Liabilities** means the actuarial value at the expiry of the Term (calculated in accordance with the Revised Actuarial Assumptions) of the aggregate of the benefits prospectively and contingently payable which have accrued in Capita Final Salary Scheme to or in respect of each Re-transferring Member (including any benefits granted in respect of him relating to a transfer payment received by Capita Final Salary Scheme from another pension scheme) in respect of pensionable service in Capita Final Salary Scheme before the expiry of the Term allowing for future salary escalation in accordance with the equivalent provision in the Actuary's Letter relating to the Past Service Liabilities.

**Re-transferring Members** means those Pensionable Employees who join the Incoming Contractor's scheme at the expiry of the Term and consent in writing to the transfer of their accrued rights under Capita Final Salary Scheme to the Incoming Contractor's Scheme and in respect of whom an amount equal to the Adjusted Re-transfer Amount is received by the Incoming Contractor's Scheme.

**Revised Actuarial Assumptions** means the actuarial methods and assumptions set out in the Actuary's Letter to be used in calculating the Past Service Liabilities, revised for use in calculating the Re-transfer Past Service Liabilities by agreement between the Incoming Contractor's Actuary and Capita's Actuary as described in paragraph 4.1 (or otherwise determined under paragraph 6) in respect of changed circumstances between the date of the Actuary's Letter and the expiry of the Term.

**Subsequent Payment Date** means the date which is 10 Business Days after the latest of:

- (a) the day Capita receives copies of the transfer consent forms referred to in the definition of "Re-transferring Members" above;
- (b) the day the Re-Transfer Amount is determined and agreed in accordance with one of paragraphs 4.5 and 6;
- (c) Inland Revenue approval of the payment of the Adjusted Re-Transfer Amount as a bulk transfer payment as described in paragraph 4.7.

**Subsequent Pensionable Employees** means those Pensionable Employees who (1) immediately prior to the expiry of the Term are members of Capita Final Salary Scheme ; (2) are employed, assigned or engaged in the provision

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of the Services and; (3) become employees of the Incoming Contractor on the expiry of the Term.

**Taxes Act** means the Income and Corporation Taxes Act 1988.

**Transfer Amount** means such amount as shall be determined by PCSPS's Actuary and agreed by Capita's Actuary in accordance with paragraph 3 (or otherwise determined in accordance with paragraph 6) being the aggregate of the Past Service Liabilities as at the Relevant Transfer Date.

**Transferring Employees** means those employees who are wholly or mainly engaged in services equivalent to the Services immediately before the Relevant Transfer Date and who are listed in Appendix E to Section 5.

**Transferring Members** means those of the Relevant PCSPS Employees who join Capita Final Salary Scheme with effect from the Relevant Transfer Date pursuant to paragraph 2 and consent in writing to the transfer of their accrued rights under the PCSPS Scheme to Capita Final Salary Scheme and in respect of whom an amount equal to the Adjusted Transfer Amount is received by Capita Final Salary Scheme .

## **2 The Contractor's Schemes**

- 2.1 The Contractor shall procure that the Relevant PCSPS Employees as at the Relevant Transfer Date shall be offered membership of the Capita Final Salary Scheme with effect from the Relevant Transfer Date on terms which satisfy the requirements of paragraphs 2.3, 2.4, and 2.6 of this Appendix below.
- 2.2 The Contractor shall procure that the Relevant Existing Contractors Employees as at the [Relevant Transfer Date] shall be offered membership of the Capita Money Purchase Scheme with effect from the [Relevant Transfer Date] on terms which satisfy the requirements of paragraphs 2.3, 2.5 and 2.7 of this Appendix below.
- 2.3 The Contractor shall immediately following the Relevant Transfer Date provide the benefits described in paragraphs 2.4 and 2.5 of this Appendix below.
- 2.4 The benefits to be provided by the Contractor under the Capita Final Salary Scheme for and in respect of the Relevant Final Salary Employees on retirement, death or withdrawal from service in respect of pensionable service after the Relevant Transfer Date shall be calculated in accordance with the Classic PCSPS Section of the Capita Final Salary Scheme for members of the Classic PCS Pension Scheme at the Relevant Transfer Date and in accordance with the Premium PCSPS Section of the Capita Final Salary Scheme for members of the Premium PCS Pension Scheme at the Relevant Transfer Date.

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2.5 The benefits to be provided by the Contractor under the Capita Money Purchase Scheme for and in respect of the Relevant Existing Contractors Employees on retirement, death or withdrawal from service in respect of pensionable service after the [Relevant Transfer Date] shall be provided in accordance with the terms of the Capita Money Purchase Scheme with the following variations:-

- (a) A payment will be made in the form of additional salary to the Relevant Existing Contractors Employees who elect to join the Capita Money Purchase Scheme, such payment to be made whilst the Relevant Existing Contractors Employee remains a member of the Capita Group Money Purchase Scheme. This payment will represent the difference between the employer contribution paid by the Contractor in to the Capita Money Purchase Pension Scheme and the employer contribution paid by Iron Mountain into the Iron Mountain Norwich Union Pension Scheme.

**3. CALCULATION AND PAYMENT OF TRANSFER AMOUNT**

Capita shall apply the Adjusted Transfer Amount (or, if the Adjusted Transfer Amount is not received in full, the actual amount received) solely to provide final salary retirement benefits under Capita Final Salary Scheme for and in respect of the Transferring Members. The benefits to be provided in respect of each Transferring Member shall be as determined by PCSPS's Actuary as being of equal value as at the Relevant Transfer Date to the appropriate part of the Transfer Amount (or if the whole Adjusted Transfer Amount is not received, a proportionate part of the actual amount received) on the basis of the Actuarial Assumptions.

3.1 Capita and the Authority will provide PCSPS's Actuary with (or will arrange for PCSPS's Actuary to be provided with) all such information within 30 days after the Relevant Transfer Date as he shall reasonably require as to the Transferring Members to enable him to complete PCSPS's Actuary's Report. the Authority shall procure that (provided that the earlier provisions of this paragraph have been complied with):

3.1.1 PCSPS's Actuary shall within 60 days after the later of the Relevant Transfer Date and the day the information referred to above within paragraph 3.1 is made available to PCSPS's Actuary, prepare PCSPS's Actuary's Report; and

3.1.2 a copy of PCSPS's Actuary's Report is delivered to Capita's Actuary as soon as it is available accompanied by all such information relating to the Transferring Members as Capita's Actuary may reasonably

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require to enable him to verify the calculations set out in 's Actuary's Report.

- 3.2 Capita's Actuary shall have 30 days from the later of the date of receipt of PCSPS's Actuary's Report and the date of receipt of the information referred to above within paragraph 3.1.2 to notify PCSPS's Actuary either that he agrees to the sum specified in PCSPS's Actuary's Report or to serve notice under paragraph 3.3 that he disagrees with the sum.
- 3.3 If Capita's Actuary does not agree the sum set out in PCSPS's Actuary's Report as being the Transfer Amount on the basis of the Actuarial Assumptions then he shall serve notice of this within 30 days of receipt of PCSPS's Actuary's Report on PCSPS's Actuary, the Authority and Capita. the Authority and Capita shall then procure that Capita's Actuary and PCSPS's Actuary shall negotiate with a view to resolving any differences, but in default of agreement within the period of 30 days following service on PCSPS's Actuary of notice that Capita's Actuary does not agree the sum then the calculation of the Transfer Amount may be referred to an independent Actuary for determination on the application of any party in accordance with the provisions of paragraph 6.
- 3.4 If Capita's Actuary agrees the sum set out in PCSPS's Actuary's Report, he shall notify PCSPS's Actuary within 30 days of receiving it that he agrees the sum set out in that Report as the Transfer Amount, and shall countersign the Report and send copies of the countersigned Report to PCSPS's Actuary, the Authority and Capita. The sum set out in PCSPS's Actuary's Report shall then be the Transfer Amount for the purposes of this Appendix G and shall be binding on the parties to this Agreement.
- 3.5 If, after negotiation in accordance with paragraph 3.3, PCSPS's Actuary and Capita's Actuary agree another sum as representing the Transfer Amount on the basis of the Actuarial Assumptions, then they shall issue a joint certificate confirming the amount of that sum and that it shall represent the Transfer Amount. That sum shall then be binding on the parties to this Agreement.
- 3.6 Subject to the consent of the Pension Schemes Office of the Inland Revenue (which consent the Authority and Capita undertake to use their respective reasonable endeavours to obtain) the Authority shall use all reasonable endeavours to procure that the trustees of PCSPS's Scheme pay to the trustees of Capita Final Salary Scheme by the Relevant Payment Date an amount in cash equal to the Adjusted Transfer Amount.

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**4. CALCULATION AND PAYMENT OF RE-TRANSFER AMOUNT**

- 4.1 the Authority may at its discretion agree with one or more Incoming Contractors that this paragraph 4 (and other relevant provisions of this Schedule 25) shall apply in respect of the payment of an Adjusted Re-transfer Amount to each Incoming Contractor's Scheme. If there is more than one Incoming Contractor, the provisions of paragraph 4 shall apply separately to each Incoming Contractor.

the Authority shall give Capita 60 days' notice if paragraph 4 is to apply in respect of any Incoming Contractor at the expiry of the Term, and Capita and the Authority shall procure that Capita's Actuary and the Incoming Contractor's Actuary negotiate in good faith Revised Actuarial Assumptions. If Capita's Actuary and the Incoming Contractor's Actuary have not agreed Revised Actuarial Assumptions within the period of 30 days following PCSPS's service on Capita of notice that paragraph 4 is to apply, then the determination of the Re-transfer Amount may be referred to an independent Actuary on the application of Capita or the Incoming Contractor in accordance with the provisions of paragraph 6.

- 4.2 The Incoming Contractor will provide Capita's Actuary with (or will arrange for Capita's Actuary to be provided with) all such information within 30 days after the agreement (or determination under paragraph 6) of the Revised Actuarial Assumptions as he shall reasonably require as to the Re-transferring Members to enable him to complete Capita's Actuary's Report. Capita shall procure that (provided the earlier provisions of this paragraph 4.2 have been complied with):

4.2.1 Capita's Actuary shall within 60 days after the later of the expiry of the Term and the day the information referred to above within paragraph 4.2 is made available to Capita's Actuary, prepare Capita's Actuary's Report; and

4.2.2 a copy of Capita's Actuary's Report is delivered to the Incoming Contractor's Actuary as soon as it is available accompanied by all such information relating to the Re-transferring Members as the Incoming Contractor's Actuary may reasonably require to enable him to verify the calculations set out in Capita's Actuary's Report.

- 4.3 The Incoming Contractor's Actuary shall have 30 days from the date of receipt of Capita's Actuary's Report to notify Capita's Actuary either that he agrees to the sum specified in Capita's Actuary's Report or to serve notice under paragraph 4.4 that he disagrees with the sum.

- 4.4 If the Incoming Contractor's Actuary does not agree the sum set out in Capita's Actuary's Report as being the Re-transfer Amount on the basis of the



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Revised Actuarial Assumptions then he shall serve notice of this within 30 days of receipt of Capita's Actuary's Report on Capita's Actuary, Capita and the Incoming Contractor. Capita and the Incoming Contractor shall then procure that Capita's Actuary and the Incoming Contractor's Actuary shall negotiate with a view to resolving any differences, but in default of agreement within the period of 30 days following service on Capita's Actuary of notice that the Incoming Actuary does not agree the sum then the calculation of the Re-transfer Amount may be referred to an independent Actuary for determination on the application of the Authority, Capita or the Incoming Contractor in accordance with the provisions of paragraph 6.

- 4.5 If the Incoming Contractor's Actuary agrees the sum set out in Capita's Actuary's Report, he shall notify Capita's Actuary within 30 days of receiving it that he agrees the sum set out in that Report as the Re-transfer Amount, and shall countersign the Report and send copies of the countersigned Report to Capita's Actuary, Capita and the Incoming Contractor. The sum set out in Capita's Actuary's Report shall then be the Re-transfer Amount.
- 4.6 If, after negotiation in accordance with paragraph 4.4, Capita's Actuary and the Incoming Contractor's Actuary agree another sum as representing the Re-transfer Amount on the basis of the Revised Actuarial Assumptions, then they shall issue a joint certificate confirming the amount of that sum and that it shall represent the Re-transfer Amount.
- 4.7 Subject to the consent of the Pension Schemes Office of the Inland Revenue (which consent the Authority and Capita undertake to use their respective reasonable endeavours to obtain) Capita shall use all reasonable endeavours to procure that the trustees of Capita Final Salary Scheme pay to the trustees of the Incoming Contractor's Scheme by the Subsequent Payment Date an amount in cash (or such other assets as may be agreed between the trustees of Capita Final Salary Scheme and the trustees of the Incoming Contractor's Scheme) equal to the Adjusted Re-transfer Amount.

**5. ADDITIONAL VOLUNTARY CONTRIBUTIONS**

Notwithstanding the preceding provisions of this Appendix G in relation to the assets in PCSPS's Scheme or Capita Final Salary Scheme representing any additional voluntary contribution, any benefit payable from such assets, the contributions payable which represent additional voluntary contributions and any transfer payment made from such assets shall be disregarded for all the other provisions of this Appendix G. the Authority and Capita shall nevertheless use their reasonable endeavours to procure that assets representing relevant additional voluntary contributions are transferred to Capita Final Salary Scheme on the Relevant Payment Date and to any

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Incoming Contractor's scheme to which an Adjusted Re-transfer Amount is paid.

**6. DISPUTES**

Any dispute between PCSPS's Actuary and Capita's Actuary or Capita's Actuary and an Incoming Contractor's Actuary concerning the determination or agreement of the Transfer Amount or a Re-transfer Amount or of any other matters to be determined or agreed by them for the purpose of this Schedule 25 shall, in the absence of agreement between them, be referred to an independent Actuary to be nominated jointly by the Authority and Capita or Capita and the Incoming Contractor (as the case may be), or, failing such joint nomination within 7 days of the first nomination by one party, to be nominated by the President for the time being of the Institute of Actuaries at the instance of the party first applying in writing to him. The person so appointed shall act as an expert and not as an arbitrator; his decision shall be final and binding and his costs shall (unless he determines otherwise) be borne equally between the Authority and Capita or Capita and the Incoming Contractor (as the case may be).

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**ANNEX TO APPENDIX G**

**THE ACTUARY'S LETTER**

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**APPENDIX H**

**TRANSFERRING EQUIPMENT**

This Appendix H sets out the Transferring Equipment that will transfer from the Authority to the Contractor pursuant to Condition 4.

**1. Heywood file store – core buildings equipment**

<b>Make</b>	<b>Model</b>	<b>Type</b>	<b>Serial Number</b>
Lansing Bagnall	Poes 4.1shed 111	PP (Pump truck)	76011376
Rolatruc	2000/7	HP(Pump truck)	9003182
-	-	(Pump truck)	9003183
-	-	(Pump truck)	9003204
Robur	HPTD2000	HP	D2080902
-	-	(Pump Truck)	9003203
-	-	(Pump Truck)	-
Lansing Bagnall	Poes 4-1	Electric pump truck	76011375
Yale	NER	R (reach truck)	D9300117
Britruck	Pallet Truck	HP	BTPT-2
Lansing Bagnall	TOER4.2	TT (Tow truck)	77113486
Lansing Bagnall		FLT	H2X335MO4990
Lansing Bagnall		FLT	H2X355MO4986
Lex Harvey		Hire FLT	
Robur	Ptz5500	HP (Pump truck)	-
Robur	Ptz5500	HP (Pump truck)	-

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## 2. DCS equipment

### 2.1 Heywood

				MAINTENANCE DETAILS		
POWER DRILL						
JAB 2000 / 1	2	U/K	OWNED	JAB HUGHES	01695 580 542	(PART OR LARGER NORCROSS CONTRACT)
TRUCKS						
	LANSING BAGNALL REACH TRUCK	FRER53324DLTM	OWNED	FINNING UK (LEX HARVEY)		
	LANSING BAGNALL REACH TRUCK	83035476	OWNED	FINNING UK (LEX HARVEY)		
	CROWN PUMP TRUCK	9002842	OWNED	FINNING UK (LEX HARVEY)		
	SLINGSBY PUMP TRUCK	9003201	OWNED	FINNING UK (LEX HARVEY)		
	LANCING BAGNALL PALLET RIDER	7601136	OWNED	FINNING UK (LEX HARVEY)		
	CLIMAX COUNTERBALANCE	9001123	OWNED	FINNING UK (LEX HARVEY)		
	ROLATRUC PUMP TRUCK	9002843	OWNED	FINNING UK (LEX HARVEY)		
	LANCING BAGNALL TUG	E-TT-3786	OWNED	FINNING UK (LEX HARVEY)		

There is also a number of small office machinery which will be for transfer i.e. guillotines, typewriters etc. These have not been listed.

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**2.2 Nelson**

**Copiers**

- Shed (A).           NRG 3222.           S/N H2404602613  
Fax Room.         NRG 3222.           S/N H2404602628  
Shed (B).         NRG 3222.           S/N H2404602623  
Mid Floor. Xerox DC432. S/N 2145151301

**Electric Drill**

- JAB 100P Power Drill. S/N unknown

**Franking Machine**

- Neopost F220 Base unit. S/N 609132N  
Neopost Meter.         S/N 606789P

**Manual Trucks**

- Pallet Truck x 3. S/N's unknown  
Stacker Truck x 2. S/N's unknown

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**APPENDIX I**

**DWP FILESTORE SITES**

HENDON REMOTE STORE
HEYWOOD
NELSON
WILLAND
GLASGOW BC
MANCHESTER REMOTE STORE
WOKING
MITCHAM SSO
SOUTHAMPTON
WIMBLEDON
ASHTON UNDER LYNE
BROMLEY
BRADFORD SOUTH
BLANTYRE
SCUNTHORPE
HERTFORD REMOTE STORE
NEWBURY
SITTINGBOURNE IRC
WORTHING IRC
BRACKNELL SSO
GLASGOW DBC
NOTTINGHAM RADS
NOTTINGHAM FILE STORE
SUNDERLAND/WEAR SIDE
SUTTON
LINCOLN WIGFORD HOUSE
COATBRIDGE DIRC
KENNINGTON PARK
CHELMSFORD
EDINBURGH ERIC
PETERHEAD
SHEFFIELD REMOTE STORE
NEWPORT REMOTE STORE
BISHOP AUCKLAND
BLACKBURN CSA
CLITHEROE CSA
CROYDON

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KINGSTON JSA
DONCASTER
TEES
OXFORD
NEWCASTLE DIRC
MAKERFIELD BC
HULL DISC
ABERDEEN



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**APPENDIX J**

**PREMISES**

**1. Licence to occupy the Premises**

1.1 In respect of the Premises the Authority hereby agrees and undertakes with the Contractor as follows:

- to allow the Contractor's staff to occupy the Premises to deliver the Services for the Authority and organisations associated with the Authority (and at Nelson and Willand for other clients of the Contractor by agreement with the Authority), such occupancy to be free of all charges;
- to be responsible for all fixtures and fittings, shelving, security, fabric of buildings, environmental controls, heating, lighting, mechanical & electrical services, water, drainage, sewerage, caretaking, cleaning, toilets or kitchens;
- to allow the Contractor to discharge its duties fully under the Contract with the Authority and to the standards required for the period of the Contract and any subsequent extensions;
- to pay all taxes, business rates and water rates and out-goings in respect of the Premises including the cost of heating and lighting the Premises and telephone costs;
- to maintain Health & Safety responsibility for the Premises, except that the Contractor will have its own responsibility for its own staff as an employer;
- to maintain Fire Extinguisher equipment in good working order and to be responsible for Fire evacuation procedures on site;
- to maintain the grounds of the buildings at the Premises in a clean and tidy condition;
- not to apply any charge for dilapidations or other such costs at the end of the Contractor's occupancy of the Premises and
- to enable the Contractor to have access to and from the Premises and not to hinder or obstruct such access.

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1.2 The Contractor hereby agrees and undertakes with the Authority as follows:

- to keep and maintain the Premises in a clean and tidy condition and in a state of good repair in accordance with its existing state of repair and condition at the date of this Contract (fair wear and tear excepted) and the parties shall conduct out a survey of the condition of the Premises at the date of this Contract;
- not to cause any damage to the Premises or the Building;
- to notify to the Authority any damage to the Premises or Building that occurs;
- not to do any act or thing by which any insurance of the Premises or the Building may become void or voidable or by which the insurance premium might be increased and to reimburse the Authority for any such increase;
- not to cause or permit to be caused any annoyance nuisance or disturbance at or on the Premises or in the Building or to any adjoining or neighbouring property;
- not to make any structural alterations or additions to the Premises;
- to keep clean and free from obstruction and not to damage any conducting media in or serving the Premises;
- the Contractor shall occupy the Premises at its own risk and the Contractor shall fully indemnify the Authority from and against all claims, losses, demands, expenses or liabilities made in connection with any breach of any undertaking, agreement or covenant on the part of the Contractor contained in this Licence set out in this Appendix J; and
- not to impede in any way the Authority or its officers servants or agents in the exercise of the Authority's rights of possession and control of the Premises.

**2. Nelson**

2.1 The current operation at Nelson will transfer to Capita on 1<sup>st</sup> August 2004. All Contractor staff-related costs will be the responsibility of Capita subject to the provisions of section 4.

2.2 At a date to be agreed, but no later than 1<sup>st</sup> July 2007, and (unless otherwise agreed) contemporaneous with the Migration of the final records from Nelson to

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Heywood, or 31<sup>st</sup> March 2006 (when the Authority's current lease expires), whichever is the later, the Contractor's licence to occupy the Premises at Nelson in accordance with paragraph 1 of this Appendix J shall cease and the Contractor will take over the responsibility for such premises subject to the prior agreement of suitable costs, lease terms and conditions related to the Contractor's business activities on the site including terms covering responsibility for rent, rates and service charge, plus such environmental services, caretaking, cleaning and security as the Contractor sees fit ("Premises Transfer").

2.3 Should the Authority and the Contractor agree to maintain any records at Nelson, following the date of any Premises Transfer, this shall be by separate agreement and not affect the transfer of responsibilities under paragraph 2.2.

2.4 A Health & Safety audit shall be held in advance of any Premises Transfer. The Authority shall bear the cost of any items which require remedy in excess of £5,000.

2.5 No existing contractual or sub-contractual arrangements shall transfer to the Contractor pursuant to any Premises Transfer unless agreed between the parties in advance and no outstanding costs or liabilities shall be inherited by the Contractor at the point of any such transfer, including any dilapidations, deferred costs, outstanding repairs or maintenance or other works.

2.6 All premises and environmental cost will continue to be met by the Authority until the date of any Premises Transfer.

### **3. Willand**

3.1 The current operation at Willand will transfer to Capita on 1<sup>st</sup> October 2004. All Contractor staff-related costs will be the responsibility of Capita subject to the provisions of section 4.

3.2 At a date to be agreed, but no later than 1<sup>st</sup> July 2007, and (unless otherwise agreed) contemporaneous with the Migration of the final records from Willand to Heywood, the Contractor's licence to occupy the Premises at Willand in accordance with paragraph 1 of this Appendix J shall cease and the Contractor will take over the responsibility for such premises subject to the prior agreement of suitable costs, lease terms and conditions related to the Contractor's business activities on the site including terms covering responsibility for rent, rates and service charge, plus such environmental services, caretaking, cleaning and security as the Contractor sees fit ("Premises Transfer").

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3.3 Should the Authority and the Contractor agree to maintain any records at Willand, following the date of any Premises Transfer, this shall be by separate agreement and not affect the transfer of responsibilities under paragraph 3.2.

3.4 A Health & Safety audit shall be held in advance of any Premises Transfer. The Authority shall bear the cost of any items which require remedy in excess of £5,000.

3.5 No existing contractual or sub-contractual arrangements shall transfer to the Contractor pursuant to any Premises Transfer unless agreed between the parties in advance and no outstanding costs or liabilities shall be inherited by the Contractor at the point of any such transfer, including any dilapidations, deferred costs, outstanding repairs or maintenance or other works.

3.6 All premises and environmental cost will continue to be met by the Authority until the date of any Premises Transfer.

**4. Address of the Premises**

Heywood Filestore  
Manchester Road  
Heywood  
Manchester  
OL10 2PZ

DCS Filestore Nelson  
Schofield Mill  
Brunswick Street  
Nelson  
BB9 0HU

Willand Remote Store  
Unit 5 Blackdown Park  
Willand Industrial Estate  
Devon  
EX15 2FS

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**APPENDIX K  
AUTHORITY GUIDANCE**

**None Applicable**

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**APPENDIX L  
AUTHORITY POLICIES**

**None Applicable**